

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

JACOB A. FRUIT,)	
)	
Petitioner ¹ ,)	Case No. 08 C 50049
)	(07 CR 50001-01)
v.)	
)	Judge James B. Zagel
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**UNITED STATES' RESPONSE IN OPPOSITION TO
PETITIONER'S MOTION PURSUANT TO 28 U.S.C. § 2255**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, submits the following response to petitioner's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255:

I. PROCEDURAL HISTORY

On January 30, 2007, an indictment was returned charging petitioner Jacob A. Fruit and Phillip G. Wright with one count of bank robbery, in violation of 18 U.S.C. §§ 2113(a). R.11.² On March 19, 2007, co-defendant Wright pled guilty to the charge contained in the

¹ In his § 2255 petition, Jacob A. Fruit incorrectly identified himself as the "defendant" and the United States as the "plaintiff." The United States respectfully requests that this court order that the caption be changed to correctly reflect Fruit's status as the petitioner and the United States' status as the respondent.

² The case number of petitioner Fruit's criminal case is 07 CR 50001-01. All citations to documents contained in the record of that case are denoted "R." and followed by the applicable document number.

indictment. R.18, 19. As part of his plea agreement, Wright agreed to cooperate with the United States in its prosecution of petitioner. *Id.*

Petitioner subsequently pled guilty on September 5, 2007. R.29, 30. In his signed, written plea agreement, petitioner admitted that he had participated with Wright in the robbery of State Bank of Paw Paw, in Paw Paw, Illinois, on January 2, 2007. R.30 at 2-4. Specifically, petitioner admitted that he planned the robbery with Wright on the morning of January 2, 2007. *Id.* at 2. Petitioner further admitted that he gave Wright instructions on how to commit the robbery. *Id.* Regarding the commission of the robbery, petitioner acknowledged that he stood outside the bank as a lookout, while Wright went inside the bank and demanded money from the tellers. *Id.* at 3. After the robbery, defendant and Wright fled the bank in Wright's vehicle and led deputies from Lee and DeKalb Counties on a high-speed chase. *Id.* at 4. After Wright stopped the vehicle at a farm outside of Sycamore, Illinois, both petitioner and Wright got out of the vehicle and fled on foot. *Id.* Petitioner further admitted that during this foot chase, he turned and pointed a BB gun at one of the deputies. *Id.* The deputy fired his service weapon, striking petitioner in the ear. *Id.* The deputies then took petitioner and Wright into custody. *Id.*

In return for the concessions made by the United States in the plea agreement, petitioner waived his right to appeal his sentence. *Id.* at 13-14. *See also* P.Tr. 12.³ Petitioner

³ A copy of the transcript of the plea hearing is attached to this response as "Exhibit A." All references to this transcript are denoted "P.Tr." and followed by the applicable page number.

also agreed to waive his right to file a motion pursuant to 28 U.S.C. § 2255, except to the extent that such claim was based upon involuntariness or ineffective assistance of counsel relating to the negotiation of that waiver. *Id.*

Petitioner's sentencing hearing was conducted on December 5, 2007. R.37, 38. This court first granted defense counsel's objection to the Pre-Sentence Investigation Report ("PSR"), finding that the State Bank of Paw Paw did not qualify as a "vulnerable victim" for purposes of Guideline 3A1.1. S.Tr. 3-6.⁴ The court then sentenced petitioner to 78 months of imprisonment. R.38. The 78 month sentence was at the upper end of the applicable Sentencing Guidelines range. S.Tr. 6.

Petitioner filed the present § 2255 petition on March 24, 2008. On April 21, 2008, this court issued an order directing the United States to respond by May 19, 2008.

III. DISCUSSION

A. Petitioner's Pre-Plea Hearing Claims

Petitioner alleges that numerous actions (and failures to take action) by his defense counsel constitute ineffective assistance of counsel. Several of petitioner's complaints relate to events that occurred prior to his plea hearing. Petitioner, however, waived all of these claims when he entered his voluntary guilty plea on September 5, 2007.

⁴ A copy of the transcript of the sentencing hearing is attached to this response as "Exhibit B." All references to this transcript are denoted "S.Tr." and followed by the applicable page number.

“[A] knowing and voluntary guilty plea bars the defendant from subsequently challenging alleged constitutional deprivations that occurred prior to the plea.” *United States v. Seybold*, 979 F.2d 582, 585 (7th Cir. 1992). The *Seybold* court went on to quote the following language from the Supreme Court’s decision in *Tollett v. Henderson*, 411 U.S. 258, 267 (1973):

“[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McCann*. [397 U.S. 759 (1970)].

The Seventh Circuit also stated: “‘The only rational manner in which a judge may determine whether a plea is knowingly and voluntarily made, is to observe the defendant’s demeanor and responses to the court’s questions and to rely on the defendant’s sworn answers.’” *Seybold*, 979 F.2d at 587 (quoting *United States v. Ellison*, 835 F.2d 687, 693 (7th Cir. 1987)). “The record of a Rule 11 proceeding is ‘entitled to a presumption of verity.’” *Seybold*, 979 F.2d at 587 (quoting *Key v. United States*, 806 F.2d 133, 136 (7th Cir. 1986)).

In the present case, petitioner entered a knowing and voluntary plea of guilty. After addressing the defendant on the record, this court first found that defendant was competent to offer a guilty plea. P.Tr. 4. A short time later, petitioner told the court that he was satisfied with his attorney’s efforts and that he had discussed with his attorney the charge and

everything he knew about the case. P.Tr. 5. The court then carefully explained petitioner's trial rights to him, and petitioner indicated that he understood those rights. P.Tr. 6-9. In response to the court's questions, petitioner stated that he had read the plea agreement and discussed it with his attorney. P.Tr.9-10. Petitioner also indicated that he understood that the court could sentence him to any sentence up to the maximum of 240 months of imprisonment. P.Tr. 11, 13. Petitioner also stated that he understood that he was giving up his right to appeal the sentence. P.Tr. 12. Petitioner then affirmed that no one was forcing him to plead guilty, and that one had threatened him in any way to cause him to plead guilty. P.Tr. 12. Defendant also affirmed that his decision to plead guilty was entirely voluntary. P.Tr. 13.

The court's colloquy with the petitioner at the plea hearing establishes that petitioner entered his guilty plea knowingly and voluntarily. Thus, unless petitioner can establish that the advice he receive from counsel prior to the plea hearing constituted ineffective assistance of counsel, petitioner has waived all of his claims relating to events that preceded his plea hearing. As discussed in the following subsections, however, the alleged pre-plea hearing errors cited by petitioner in his § 2255 motion do not constitute ineffective assistance. As a result, petitioner's claims must be denied.

1. *Miranda* Claim

Petitioner first claims that his constitutional rights were violated when he was questioned by the FBI during the evening of his arrest. Specifically, defendant claims that

he requested that an attorney be present during the questioning, but that his request was denied. During the pre-trial proceeding's, petitioner's counsel did not file a motion to suppress. Presumably, petitioner is claiming that his counsel's failure to file a motion to suppress constitutes ineffective assistance.

To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate: (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that a reasonable probability exists that, but for his attorney's unprofessional representation, the result of the proceeding would have been different. *Ebbole v. United States*, 8 F.3d 530, 533 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). In the context of a guilty plea, the defendant must show that but for counsel's deficient advice, he would have insisted on proceeding to trial. *Bethel v. United States*, 458 F.3d 711, 715 (7th Cir. 2006). In determining the adequacy of an attorney's performance, a reviewing court must employ "a highly deferential presumption in favor of the reasonable exercise of professional judgment." *United States v. Hodges*, 259 F.3d 655, 658 (7th Cir. 2001).

"When the claim of ineffective assistance is based on counsel's failure to present a motion to suppress, . . . a defendant [must] prove the motion was meritorious." *United States v. Cieslowski*, 410 F.3d 353, 360 (7th Cir. 2005)(citing *Owens v. United States*, 387 F.3d 607, 610 (7th Cir. 2004) and *United States v. Stewart*, 388 F.3d 1079, 1084 (7th Cir. 2004)). Further, "[a]n ineffective assistance of counsel claim cannot stand on a blank record,

peppered with the defendant's own unsupported allegations of misconduct." *Hodges*, 259 F.3d 660.

In the present case, petitioner has not proved that a motion to suppress his statements to the FBI would have been meritorious. Petitioner has offered no evidence in support of this point. Instead, petitioner has offered only his self-serving, unsupported allegation that he requested counsel during the interview. This allegation is belied by documents that were provided to defense counsel during discovery.

Immediately before he was interviewed on January 2, 2007, petitioner signed an "Advice of Rights" form.⁵ This form expressly advised defendant of his rights, including his right to have a lawyer present during questioning and his right to a court-appointed lawyer if he could not afford to hire one on his own. The form also contains a "Waiver of Rights" section which states: "I have read this statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present." Defendant's signature appears immediately below this waiver.

Given the fact that his client signed a form which states "I am willing to answer questions without a lawyer present," defense counsel's decision not to file a motion to suppress was a rational, strategic decision. If the petitioner had testified at the suppression hearing that he had requested counsel, and if the court ruled against him, petitioner would have been exposed to an additional two-level enhancement for obstruction of justice,

⁵ This form was provided to defense counsel at page 000019 of the government's discovery materials. A copy of this form is attached to this response as "Exhibit C."

pursuant to Guideline 3C1.1, and would have likely forfeited his opportunity to receive a three-level reduction for acceptance of responsibility, pursuant to Guideline 3E1.1. *See* USSG § 3C1.1, application notes 4(b) & (f); USSG § 3E1.1, application note 4. This potential five level swing would have exposed defendant to a Sentencing Guidelines range of 108 to 135 months of imprisonment. Based upon this record, defendant has not proved that his motion to suppress would have been successful, nor has he proved that his counsel was ineffective for failing to file the motion. *See Cieslowski*, 410 F.3d at 361 (holding that defense counsel was not ineffective for failing to file a motion to suppress, where she was concerned that the motion would expose her client to an obstruction of justice enhancement and a loss of the acceptance of responsibility reduction).

2. Number of Visits with Defense Counsel

Petitioner's second and third allegations of ineffective assistance are: "During the course of his pre-trial Fruit seen his attorney present at two status hearings only" and "Fruit's inability to review the agreement in which he plead (sic) guilty to with proper counsel is a direct violation of his constitutional rights." Petitioner's claims are contradicted by the record, which demonstrates that petitioner had sufficient time to consult with his attorney prior to the plea hearing. In addition, petitioner has not proved any prejudice resulted from his alleged inability to meet with his attorney.

At the plea hearing, this court engaged in the following colloquy with petitioner:

THE COURT: Have you had enough time to talk to Mr. Flynn⁶?

THE DEFENDANT: Yes.

THE COURT: Have you told Mr. Flynn everything you know about the case?

THE DEFENDANT: Yes.

THE COURT: Are you satisfied with the advice and efforts on your behalf that were made by Mr. Flynn?

THE DEFENDANT: Yes.

P.Tr. 5. At no time during the plea hearing did petitioner state that he had not had enough time to consult with his attorney.

“Defendants cannot obtain relief by the expedient of contradicting statements freely made under oath, unless there is a compelling reason for the disparity.” *Nunez v. United States*, 495 F.3d 544, 546 (7th Cir. 2007). “District courts do not and need not treat lightly responses given under oath at a hearing conducted pursuant to Rule 11.” *United States v. Winston*, 34 F.3d 574, 578 (7th Cir. 1994). “[T]he record of a Rule 11 proceeding is entitled to a ‘presumption of verity,’ and [the] answers contained therein are binding.” *Id.* (citing *United States v. Seybold*, 979 F.2d 582, 587 (7th Cir. 1992)).

⁶ The affidavit of Mr. Haneef Omar is attached as “Exhibit D.” As explained by Mr. Omar, petitioner’s case was initially handled by Paul Flynn of the Federal Defender Program. After petitioner’s plea hearing, Mr. Flynn transferred from the Rockford office to the Chicago office of the Federal Defender Program. After Mr. Flynn transferred, petitioner’s case was reassigned to Mr. Omar.

In the present case, when he was placed under oath at the plea hearing, petitioner affirmed that he had had enough time to consult with his attorney about the case. Petitioner further affirmed that he was satisfied with his attorney's efforts on his behalf. Petitioner has offered no evidence suggesting why his prior statements were incorrect and should be disregarded. Because petitioner's claim that he had inadequate time to consult with his attorney is contradicted by his own statements under oath, this claim must be rejected.

Furthermore, even if petitioner did only meet with his attorney twice prior to the plea hearing, this fact alone is insufficient to sustain an ineffective assistance claim. The Seventh Circuit has stated: ““We know of no case establishing a minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.”” *United States v. Mealy*, 851 F.2d 890, 908 (7th Cir. 1988)(quoting *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir. 1988) and *United States ex rel. Kleba v. McGinnis*, 796 F.2d 947, 954 (7th Cir. 1986)).

In *United States v. Goudy*, 792 F.2d 664, 672 (7th Cir. 1986), the defendant alleged that his attorney was ineffective, because he failed to meet with defendant during the three months preceding trial. The Seventh Circuit rejected Goudy's claim, noting that he had not contradicted his attorney's claim that there was no need for such a meeting. *Id.* In addition, the court of appeals stated: “Nor does Goudy suggest in any way how the outcome of the trial would have differed . . . if his attorney had met with him some unspecified number of times before trial.” *Id.* See also *Mealy*, 851 F.2d at 908 (stating “Spotts fails to explain how the lack of consultation affected the outcome of the trial.”)

In the present case, petitioner does not allege how the outcome his case would have been different if he had met with his attorney more often.⁷ Specifically, petitioner does not indicate how or why additional meetings with his attorney would have altered his decision to plead guilty. As a result, petitioner has not established that his attorney's failure to meet with him on more occasions constitutes ineffective assistance of counsel.

3. Inability to Review Discovery

Petitioner's fourth allegation is that he was never permitted to review "Part 1" of the discovery package. Once again, however, petitioner's bare allegation fails to establish that his counsel was ineffective.

In *United States v. Seybold*, 979 F.2d 582, 586-87 (7th Cir. 1992), the defendant argued that his plea was involuntary, because "his inability to review all the discovery materials left him, on the eve of trial, 'without knowledge of how strong the government's case against him would be.'" The Seventh Circuit rejected this argument, stating: "*Boykin* [*Boykin v. Alabama*, 395 U.S. 238 (1969)] and its progeny do not require the defendant to know the full extent of the government's case against him before pleading guilty. Instead, 'knowledge,' as used in this context refers to 'a full understanding of the charges against [the

⁷ Petitioner alleges that in reviewing the plea agreement with him, Assistant Federal Defender Haneef Omar told petitioner that he was unfamiliar with the facts of the case. In his affidavit, Mr. Omar denies making this comment. Even if it is assumed that petitioner's allegation is true, petitioner has not demonstrated how Mr. Omar's comment affected the outcome of his case. If true, petitioner was aware of Mr. Omar's comment prior to plea hearing. In addition, despite this comment by Mr. Omar, defendant still informed the court that he was satisfied with his attorney's efforts and went forward with his guilty plea.

defendant] and the possible consequences of his plea.” *Seybold*, 979 F.2d at 587 (*quoting Brady v. United States*, 397 U.S. 742, 749, n.6 (1970)).

Petitioner has cited no authority which requires a defense attorney to allow his client to read every single page of the government’s discovery. Furthermore, as petitioner affirmatively acknowledged at his plea hearing, he had had enough time to speak with his attorney and he had told his attorney everything he knew about the case. P.Tr. 5. Given this acknowledgment, petitioner cannot establish that his counsel’s performance in reviewing the government’s evidence with him fell below an objective standard of reasonableness.

Furthermore, petitioner has not explained how having access to additional discovery materials would have changed his decision to plead guilty. As petitioner admitted under oath at his plea hearing, he participated in the January 5, 2007, robbery of State Bank of Paw Paw by: (1) helping to plan the robbery; and (2) by serving as a look-out while the robbery occurred. P.Tr. 13-16. In addition, petitioner was caught “red handed” immediately after the robbery. Specifically, he was observed running from the get-away vehicle and pointing a weapon at the pursuing sheriff’s deputies. P.Tr. 15-16. Petitioner has not explained how any information contained in the government’s discovery materials could have possibly negated this overwhelming evidence.

4. Credibility of Co-Defendant

Petitioner’s final claim relating to his attorney’s pre-plea hearing performance relates to the credibility of cooperating co-defendant Phillip Wright. Petitioner states: “The co-defendant openly admitted to lying on his original proffer which clearly shows a lack of

credibility. This was never brought to the courts attention due to ineffectiveness of counsel.” Once again, defendant’s allegation fails to establish ineffective assistance.

The incident to which petitioner refers is as follows: Immediately after he was arrested on January 5, 2007, co-defendant Wright confessed. He also implicated petitioner in the robbery. On January 24, 2007, Wright provided a proffer to the United States. During this proffer, Wright maintained that he first discussed the robbery with petitioner while they were driving from Rockford to Paw Paw on January 5, 2007. During a follow-up proffer on January 31, 2007, Wright admitted that he actually first began speaking with petitioner about the robbery on the preceding day. Wright explained that he had previously lied about this point because he was concerned that his sentence would be increased if the crime was “pre-meditated.” On March 15, 2007, the United States disclosed Wright’s two proffers to the defense as part of a supplemental discovery package.⁸

As petitioner acknowledges in his motion, his attorney provided him with “Part 2” of the government’s discovery package. Thus, at the time he pled guilty, petitioner was aware of Wright’s lie at the first proffer. Despite this knowledge, defendant still went forward with his plea. Thus, petitioner cannot establish that he would have chose to proceed to trial if the issue of Wright’s credibility had been handled differently.

That petitioner’s counsel advised him to plead guilty, despite Wright’s lie at the first proffer, does not establish that petitioner’s attorney was ineffective. As noted in the

⁸ A copy of the reports of Wright’s two proffers, together with the United States’ cover letter which disclosed these proffers, is attached as “Exhibit E.”

preceding subsection, petitioner was arrested immediately after the robbery, as he ran from the get-away vehicle and pointed a gun at the deputies. In light of this evidence, it is extremely doubtful that the lie told by Wright about when the planning for the robbery began would have caused the jury to disbelieve Wright's testimony and conclude that petitioner was not involved in the robbery.

Further, petitioner has failed to inform the court about his own serious credibility problems. First, if defendant had chosen to testify, he would have likely been exposed to impeachment with his prior felony conviction in 2001 for bank robbery. *See* Fed. R. Evid. 609(a)(1). In addition, regardless of whether defendant testified, the United States would have admitted the nonsensical statement that petitioner gave to law enforcement officers on the night he was arrested.⁹ During this interview, petitioner stated that: (1) the only reason he was with Wright that day was that Wright was giving him a ride to Earlville; (2) petitioner did not know of Wright's intent to rob the State Bank of Paw Paw until he saw Wright coming out of the bank with the money; (3) once they got back inside the car, Wright forced petitioner to place the money from the bank into petitioner's pockets; (4) while they were fleeing, petitioner tried to stop the car by grabbing the steering wheel and steering over the police "spike" sticks; (5) once Wright stopped the vehicle, Wright forced petitioner to run from the police; (6) as they were running, Wright fell and dropped the gun and petitioner

⁹ A copy of the FBI's report of the interview of petitioner is attached as "Exhibit F."

picked the gun up; and (7) after he picked up the gun, petitioner turned around to show the police the gun and yelled to them: “I have his gun!”

Based upon the facts cited above, counsel’s advice that petitioner should plead guilty did not fall below an objective standard of reasonableness. Instead, this advice reflects an appropriate strategic decision designed to reduce, as much as possible, the term of petitioner’s inevitable incarceration.

B. Petitioner’s Post-Plea Hearing Claims

The remaining allegations in petitioner’s motion relate to his counsel’s performance at the sentencing stage of the proceedings. As noted in the “Procedural History” section of this response, petitioner waived his right to file a § 2255 motion. Because petitioner has not established that his § 2255 waiver was the result of involuntariness or ineffective assistance of counsel, petitioner’s § 2255 waiver must be enforced and his challenges to his sentence dismissed.

As a general rule, waivers of the right to file § 2255 motions are enforceable. *Jones v. United States*, 167 F.3d 1142, 1145 (7th Cir. 1999). “A plea agreement that also waives the right to file a § 2255 motion is generally enforceable unless the waiver was involuntary or counsel was ineffective in negotiating the agreement.” *Bridgeman v. United States*, 229 F.3d 589, 591 (7th Cir. 2000)(citing *Mason v. United States*, 211 F.3d 1065, 1069 (7th Cir. 2000)). “[I]t is *only* in these situations that a waiver is unenforceable.” *Mason*, 211 F.3d at 1069 (emphasis in original).

In the present case, petitioner has not established that his § 2255 waiver resulted from ineffective assistance of counsel. All of petitioner's pre-plea hearing claims of ineffective assistance have been discussed in the preceding sections of this response. As previously explained, petitioner has not established that his counsel's performance was substandard with regard to any of his claims. Thus, petitioner's § 2255 waiver was not caused by ineffective assistance of counsel.

In addition, petitioner has not established that his § 2255 waiver was involuntary. To the contrary, the transcript of the plea hearing clearly establishes that the waiver was, in fact, voluntary. During the plea colloquy, this court expressly addressed petitioner regarding the appellate/§ 2255 waiver:

THE COURT: It also says here that whatever sentence I impose, you're going to be giving up any right you have to appeal that sentence or to challenge it in any way later on; do you understand that?

DEFENDANT FRUIT: Yes.

THE COURT: Now, your lawyer has probably explained to you, and it's in the agreement, that there are a couple of exceptions to that rule which would allow you to challenge a sentence. I will tell you now that those exceptions are very rare, so for all practical purposes, you are giving up any right you have to

appeal a challenge at sentence; do you understand this?

DEFENDANT FRUIT: Yes.

P.Tr. 12. Immediately after this exchange, the court engaged in the following discourse with petitioner:

THE COURT: Has anyone forced you in any way to plead guilty?

DEFENDANT FRUIT: No.

THE COURT: Has anyone threatened you in any way to cause you to plead guilty?

DEFENDANT FRUIT: No.

THE COURT: Apart from the plea agreement, have any promises been made to cause you to plead guilty?

DEFENDANT FRUIT: No.

THE COURT: Is your decision to plead guilty entirely voluntary?

DEFENDANT FRUIT: Yes.

P.Tr. 12-13. As these exchanges clearly demonstrate, petitioner's waiver of his right to file a § 2255 motion was completely voluntary.

Even if petitioner had not waived his right to file a § 2255 motion, all of his claims relating to his sentencing still would have to be denied. Specifically, petitioner has not

established that his counsel's performance fell below an objective standard of reasonableness with respect to any of these sentencing claims.

1. Pre-Sentence Investigation Report

Petitioner's fifth, sixth, and seventh claims relate to the Pre-Sentence Investigation Report ("PSR"). Specifically, petitioner claims: (1) at the meeting with the Probation Officer, petitioner's attorney stated that he did not have any knowledge about the case; (2) a representative of the Federal Defender's office instructed petitioner not to independently contact the Probation Officer; and (3) the PSR was inaccurate. Petitioner has not established ineffective assistance with respect to any of these claims.

With regard to petitioner's claim about the meeting, Mr. Omar has denied telling the Probation Officer that he knew nothing about the case. Even assuming that Mr. Omar made this comment, petitioner has not established how this comment had any effect on the sentence petitioner received.

Assuming that the Federal Defender's office advised petitioner to avoid having independent contact with the Probation Officer, such advice does not constitute ineffective assistance. To the contrary, such an instruction constitutes sound legal advice. If a defendant attempts to minimize his criminal conduct while speaking with probation, such a comment can result in a defendant losing his acceptance of responsibility reduction. *See e.g., United States v. Travis*, 294 F.3d 837, 840 (7th Cir. 2002).

Finally, although petitioner claims that the PSR "was not accurate in many areas," he does not bother to specify what the inaccuracies were or how they affected his sentence. As

the Seventh Circuit as stated: “An ineffective assistance of counsel claim cannot stand on a blank record, peppered with the defendant’s own unsupported allegations of misconduct.” *United States v. Hodges*, 259 F.3d 655, 660 (7th Cir. 2001).

2. Low-end Prediction

Petitioner’s eighth claim of ineffective assistance is that his attorney inaccurately predicted that petitioner would receive a sentence at the low-end of the applicable Sentencing Guidelines range. Contrary to petitioner’s assertion, an inaccurate sentencing prediction by defense counsel does not constitute ineffective assistance.

In *United States v. Martinez*, 169 F.3d 1049, 1053 (7th Cir. 1999), the Seventh Circuit stated: “A defense attorney cannot promise his client a particular sentence; all he can do is make a prediction. . . . In this circuit, an attorney’s ‘mere inaccurate prediction of a sentence’ does not demonstrate the deficiency component of an ineffective assistance of counsel claim.” *Id.* (quoting *United States v. Barnes*, 83 F.3d 934, 940 (7th Cir. 1996)).

In addition, petitioner has not demonstrated that he was prejudiced by any inaccurate prediction by Mr. Omar.¹⁰ According to petitioner’s motion, Mr. Omar made this sentencing prediction on the day of the sentencing hearing. Thus, Mr. Omar’s prediction could not have influenced defendant’s decision to plead guilty.

Finally, as the defendant acknowledged under oath at the plea hearing, he was fully aware that the court could impose any sentence up to the statutory maximum of 20 years.

¹⁰ Mr. Omar has denied that he made any such prediction to petitioner.

P.Tr. 11. Thus, even if Mr. Omar inaccurately predicted that this court would likely sentence petitioner at the low end of the Guidelines range, defendant was in no way prejudiced by this prediction.

3. Upper End Sentence

Petitioner next claims that his counsel was ineffective because petitioner received a sentence at the upper end of the applicable Sentencing Guidelines range. Petitioner claims that if counsel had presented evidence at the sentencing hearing, the sentence would have been lower. Once again, however, petitioner has failed to support this allegation. Petitioner has not identified what evidence counsel should have presented or how this evidence would have resulted in a lower sentence. Because petitioner has not provided any support for his allegation, defendant's ineffective assistance claim based upon his upper end sentence must be denied.

4. Sentencing Memorandum

Petitioner next claims that his attorney was ineffective because he did not file a "Sentencing Memorandum." Petitioner does not specify what he means by "Sentencing Memorandum." If he is referring to an objection to the PSR's Guidelines calculations, petitioner's claim is clearly contradicted by the record.

On November 28, 2007, Mr. Omar filed an objection to the PSR on behalf of petitioner. R.35. Specifically, Mr. Omar objected to the PSR's inclusion of a two-level "vulnerable victim" enhancement based upon the State Bank of Paw Paw's status as a rural bank. *Id.* Mr. Omar prevailed on this objection at the sentencing hearing. S.Tr. 2-6.

Contrary to petitioner's assertion, the record reveals that Mr. Omar filed an appropriate objection to the PSR and successfully argued in favor of that objection. Petitioner's claim that Mr. Omar was ineffective for failing to file a "Sentencing Memorandum" has no merit.

5. Downward Departures

Finally, defendant argues that his counsel was ineffective for failing to file any motions for downward departure. Once again, petitioner's claim has no merit.

In *United States v. Cruz-Velasco*, 224 F.3d 654, 663 (7th Cir. 2000), defendant Trevino argued that his counsel was ineffective for failing to move for downward departures based upon Trevino's age, family circumstances, and situation as an illegal alien. The Seventh Circuit rejected Trevino's claim, stating: "Absent a showing that trial counsel chose not to ask for an obviously applicable departure without any justification for his actions, we cannot conclude that his performance was objectively unreasonable." *Id.* at 664. *See also United States v. Bradford*, 78 F.3d 1216, 1225 (7th Cir. 1996)(holding that counsel was not ineffective for failing to move for a downward departure on the grounds that the criminal history category overstated the seriousness of defendant's past record, where defendant had a serious, violent criminal history).

In the present case, petitioner has not cited any facts or legal grounds which would have justified a downward departure. In addition, a review of the record and the applicable legal standards reveals no basis for a downward departure.

The bases for favored downward departures are set forth in Part K of chapter 5 of the Sentencing Guidelines. A quick examination of Part K reveals that none of these departure guidelines were applicable. For example, there was no evidence of wrongful conduct by the victim tellers that would support a downward departure under § 5K2.10. Furthermore, there was no evidence that defendant committed the bank robbery because of coercion or duress (§ 5K2.12) or because of diminished mental capacity (§ 5K2.13). In addition, defendant did not voluntarily disclose his offense (§ 5K2.16). Also, because petitioner had just gotten out of federal prison for robbing the same bank, his attorney could not rationally argue for an aberrant behavior departure (§ 5K2.20).

Similarly, none of the sentencing factors of 18 U.S.C. § 3553 would have supported a downward variance from the Guidelines range. The offense committed by petitioner was a serious, violent felony. Defendant's prior criminal record, which included a conviction for robbing the same bank, demonstrated a strong need for a sentence that would promote respect for the law, afford adequate deterrence, and protect the public from further crimes of the defendant. Based upon defendant's prior criminal record, it would have been irrational for defense counsel to move for a downward variance.

IV. CONCLUSION

For the reasons stated above, the United States respectfully requests that this court deny¹¹ petitioner's motion pursuant to 28 U.S.C. § 2255.

Respectfully submitted,

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¹¹ Petitioner has not requested a hearing on his § 2255 motion. Even if he had, a hearing would not be required, based upon the vague, conclusory, and incredible claims made by petitioner in his motion. *See Ebbole v. United States*, 8 F.3d 530, 534 (7th Cir. 1993)(stating “a district court may deny a section 2255 motion without a hearing ‘if the allegations in the motion are unreasonably vague, conclusory, or incredible, or if the factual matters raised by the motion may be resolved on the record before the district court’” (*quoting Oliver v. United States*, 961 F.2d 1339, 1343, n.5 (7th Cir. 1992))).

CERTIFICATE OF FILING AND SERVICE

I, SCOTT A. VERSEMAN, certify that on May 19, 2008, I caused the foregoing “United States’ Response in Opposition to Petitioner’s Motion Pursuant to 28 U.S.C. § 2255”: (1) to be filed with the Clerk of the United States District Court for the Northern District of Illinois, Western Division; and (2) a copy thereof to be mailed by first-class mail to:

Jacob A. Fruit
Registration No. 12262-424
U.S.P. – McCreary
P.O. Box 3000
Pine Knot, Kentucky 42635

s/Scott A. Verseman

SCOTT A. VERSEMAN
Assistant United States Attorney
308 West State Street - Room 300
Rockford, Illinois 61101
815-987-4444

EXHIBIT A

09:53AM

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	No. 07 CR 50001
Government,)	
)	
Vs.)	Chicago, Illinois
)	
JACOB A. FRUIT,)	September 5, 2007
)	
Defendant.)	9:53 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL
CHANGE OF PLEA

For the Government:

THE HONORABLE PATRICK J. FITZGERALD,
UNITED STATES ATTORNEY
BY: Scott A. Verseman
308 West State Street
Suite 300
Rockford, Illinois 61101

For the Defendant:

FEDERAL DEFENDER PROGRAM
BY: Paul Flynn
55 East Monroe Street, Suite 2800
Chicago, Illinois 60603

Court Reporter:

Blanca I. Lara, CSR, RPR
219 South Dearborn Street
Room 2504
Chicago, Illinois 60604
(312) 435-5895

THE CLERK: 2007 CR 50001, United States versus Jacob

09:53AM

09:53AM 1 THE CLERK: 2007 CR 50001, United States versus Jacob
09:53AM 2 Fruit.

09:53AM 3 MR. VERSEMAN: Good morning, your Honor.

09:53AM 4 Scott Verseman for the United States.

09:53AM 5 MR. FLYNN: Good morning, your Honor.

09:53AM 6 Paul Flynn on behalf of Jacob Fruit who also appears
09:53AM 7 before your Honor.

09:53AM 8 THE COURT: We're here for a change of plea?

09:53AM 9 MR. FLYNN: That's correct.

09:53AM 10 THE COURT: Who arraigned him?

09:53AM 11 MR. VERSEMAN: I think he was arraigned in front of
09:53AM 12 Judge Mahoney in Rockford.

53AM 13 THE COURT: Judge Mahoney; that's fine.

09:53AM 14 Mr. Fruit, move to the center, its a little easier to
09:53AM 15 talk from there.

09:53AM 16 I understand it's your intention to offer a plea of
09:53AM 17 guilty. Before I can accept your plea of guilty, I've got to
09:53AM 18 determine that you're mentally competent to plea at this time,
09:54AM 19 that you've had the assistance of a lawyer, that you
09:54AM 20 understand your trial rights, that you understand the charge
09:54AM 21 against you, if your plea is voluntary, and there's a basis in
09:54AM 22 fact for your plea.

09:54AM 23 The way I do these things is, I put you under oath
09:54AM 24 and I ask you some questions. I want you to understand that
54AM 25 while I'm asking you the questions, you can speak with your

09:54AM 1 lawyer at any time. If you want me to interrupt the
09:54AM 2 proceedings, I'd be happy to do that so you can speak with
09:54AM 3 your lawyer.

09:54AM 4 It's very important that you tell me the truth. If
09:54AM 5 you give false answers to any of my questions, you can subject
09:54AM 6 yourself to prosecution for perjury, it would be a new and
09:54AM 7 separate crime.

09:54AM 8 Finally, in giving truthful answers to some of my
09:54AM 9 questions, you're going to be giving up a constitutional right
09:54AM 10 that you have. You have the right not to admit anything at
09:54AM 11 all, simply remain throughout all of these proceedings.
09:55AM 12 Obviously, if you plead guilty, you are going to admit you
55AM 13 committed a crime. So by going ahead with this procedure, you
09:55AM 14 are going to give up a constitutional right that you have. Do
09:55AM 15 you understand what I've just told you?

09:55AM 16 DEFENDANT FRUIT: Yes.

09:55AM 17 THE COURT: Swear the defendant, please.

09:55AM 18 THE CLERK: would you raise your right hand, sir.
09:55AM 19 (Defendant duly sworn.)

09:55AM 20 THE COURT: You can put your hand down.
09:55AM 21 Would you state your name for the record, please.

09:55AM 22 DEFENDANT FRUIT: Jacob A. Fruit.

09:55AM 23

09:55AM 24 THE COURT: How old, are you?

55AM 25 DEFENDANT FRUIT: 25.

09:55AM 1 THE COURT: Where do you when you're not in custody?

09:55AM 2 DEFENDANT FRUIT: Rockford, Illinois.

09:55AM 3 THE COURT: Are you married?

09:55AM 4 DEFENDANT FRUIT: No.

09:55AM 5 THE COURT: How far did you go in school?

09:55AM 6 DEFENDANT FRUIT: High school graduate.

09:55AM 7 THE COURT: What kind of work have you done in the
09:55AM 8 last 3 years?

09:55AM 9 DEFENDANT FRUIT: Contracting, cleaning.

09:55AM 10 THE COURT: Are you basically in good physical
09:55AM 11 health?

09:55AM 12 DEFENDANT FRUIT: Yes. Yes.

09:55AM 13 THE COURT: Have you had any kind of medication at
09:56AM 14 all, any drug, any pill or any alcoholic drink in the last 24
09:56AM 15 hours?

09:56AM 16 DEFENDANT FRUIT: No.

09:56AM 17 THE COURT: Have you ever been under the care of a
09:56AM 18 doctor or a hospital for a mental condition?

09:56AM 19 DEFENDANT FRUIT: No.

09:56AM 20 THE COURT: Counsel, do either of you have any doubt
09:56AM 21 as to the defendant's competence to plead at this time?

09:56AM 22 MR. VERSEMAN: I do not, your Honor.

09:56AM 23 MR. FLYNN: No, your Honor.

09:56AM 24 THE COURT: I do find that you are competent to offer
56AM 25 a plea of guilty.

09:56AM 1 Can you tell me the name of the attorney that is
09:56AM 2 representing you in this case?

09:56AM 3 THE WITNESS: Paul Flynn.

09:56AM 4 THE COURT: Have you had enough time to talk to Mr.
09:56AM 5 Flynn?

09:56AM 6 DEFENDANT FRUIT: Yes.

09:56AM 7 THE COURT: Have you told Mr. Flynn everything you
09:56AM 8 know about the case?

09:56AM 9 DEFENDANT FRUIT: Yes.

09:56AM 10 THE COURT: Are you satisfied with the advice and
09:56AM 11 efforts on your behalf that were made by Mr. Flynn?

09:56AM 12 DEFENDANT FRUIT: Yes.

09:56AM 13 THE COURT: The charge in your case is bank robbery.
09:56AM 14 Have you seen the charge against you, the indictment against
09:56AM 15 you?

09:56AM 16 DEFENDANT FRUIT: Yes.

09:56AM 17 THE COURT: And did you read it?

09:56AM 18 DEFENDANT FRUIT: Yes.

09:56AM 19 THE COURT: And did you discuss it with Mr. Flynn?

09:57AM 20 DEFENDANT FRUIT: Yes.

09:57AM 21 THE COURT: It says, basically, that the charge
09:57AM 22 involves a situation in which you aided and abetted one Philip
09:57AM 23 Wright in taking by intimidation from the person and presence
09:57AM 24 of a bank employee \$5,308 belonging to and in the care,
57AM 25 custody, control, management and possession of State Bank of

09:57AM 1 Paw Paw in Paw Paw, Illinois; do you understand that charge?

09:57AM 2 DEFENDANT FRUIT: Yes.

09:57AM 3 THE COURT: Basically, it says here that you helped
09:57AM 4 plan this robbery, that you went with Mr. Wright and that you
09:57AM 5 operated as a lookout when the robbery occurred; do you
09:57AM 6 understand that?

09:57AM 7 DEFENDANT FRUIT: Yes.

09:57AM 8 THE COURT: And do you understand that even though
09:57AM 9 you may not have actually gone into the bank, you are still
09:57AM 10 responsible for the bank robbery; as a whole; do you
09:57AM 11 understand that?

09:57AM 12 DEFENDANT FRUIT: Yes.

09:57AM 13 THE COURT: And you did, obviously, discuss with your
09:58AM 14 attorney this specific charge to which you intend to plead
09:58AM 15 guilty?

09:58AM 16 DEFENDANT FRUIT: Yes.

09:58AM 17 THE COURT: Under the constitution and laws of the
09:58AM 18 United States, you are entitled to a trial by jury on this
09:58AM 19 charge; do you understand that?

09:58AM 20 DEFENDANT FRUIT: Yes.

09:58AM 21 THE COURT: Are you retained or appointed, Mr. Flynn?

09:58AM 22 MR. FLYNN: Appointed, your Honor.

09:58AM 23 THE COURT: Mr. Flynn is, obviously, here assisting
10:46AM 24 you today, but if you chose to plead not guilty he would
46AM 25 provide assistance to you at trial, as well. He's been

10:46AM 1 appointed to serve as your counsel at trial if you wish to
10:46AM 2 proceed to trial; do you understand this?

09:58AM 3 THE WITNESS: Yes.

09:58AM 4 THE COURT: You have a right to plead not guilty; do
09:58AM 5 you understand this?

09:58AM 6 DEFENDANT FRUIT: Yes.

09:58AM 7 THE COURT: Did you say yes?

09:58AM 8 DEFENDANT FRUIT: Yes.

09:58AM 9 THE COURT: I didn't hear you. I saw you nod, but I
09:58AM 10 didn't hear you say yes.

09:58AM 11 If you plead not guilty, you have a right to a speedy
09:58AM 12 trial, at which time you would be able to see and hear all the
09:58AM 13 witnesses called to testify against you; your lawyer will be
09:59AM 14 able to cross-examine each and every one of those witnesses,
09:59AM 15 and you could use the subpoena power of this court to bring
09:59AM 16 witnesses here to testify on your behalf; do you understand
09:59AM 17 this?

09:59AM 18 DEFENDANT FRUIT: Yes.

09:59AM 19 THE COURT: At trial, you'd be presumed to be
09:59AM 20 innocent. The government would be required to prove you
09:59AM 21 guilty by competent evidence beyond a reasonable doubt before
09:59AM 22 you could be found guilty; you would not have to prove that
09:59AM 23 you were innocent. Do you understand this?

09:59AM 24 DEFENDANT FRUIT: Yes.

09:59AM 25 THE COURT: Yes?

09:59AM 1 DEFENDANT FRUIT: Yes.

09:59AM 2 THE COURT: At trial, you'd have a right to testify,
09:59AM 3 to get up on the witness stand and say that you were not
09:59AM 4 guilty or simply tell your side of the story. You also have a
09:59AM 5 right to remain silent throughout the entire trial. If you
09:59AM 6 chose to remain silent, no inference or suggestion that you
09:59AM 7 were guilty can be drawn from the fact that you did not
09:59AM 8 testify; do understand this?

09:59AM 9 DEFENDANT FRUIT: Yes.

09:59AM 10 THE COURT: The trial could be either a jury trial or
10:47AM 11 a trial by a judge without a jury. You would not have a trial
10:47AM 12 by a judge without a jury unless you personally agreed to this
10:47AM 13 procedure; do you understand this?

10:00AM 14 DEFENDANT FRUIT: Yes.

10:00AM 15 THE COURT: If you had a jury trial, you would be
10:47AM 16 tried by a jury of 12 persons. Those persons would be
10:47AM 17 selected from a larger group of individuals who come to court
10:47AM 18 because their names are drawn at random from voters lists.
10:47AM 19 You and your lawyer would have the right to exclude anybody
10:47AM 20 from the jury which tried you if they were biased against you
10:47AM 21 or otherwise disqualified. You have the right to exclude a
10:47AM 22 certain number of potential jurors simply because you did not
10:47AM 23 want them to serve on your case. Do you understand this?

10:00AM 24 DEFENDANT FRUIT: Yes.

10:00AM 25 THE COURT: If you had a jury trial, the jury would

10:00AM 1 have to agree anonymously, all 12 would have to agree before
10:00AM 2 they could reach any verdict, either guilty or not guilty; do
10:00AM 3 you understand this?

10:00AM 4 DEFENDANT FRUIT: Yes.

10:00AM 5 THE COURT: At any trial, a judge or jury would be
10:00AM 6 guided by the rule which requires that guilt be proved beyond
10:00AM 7 a reasonable doubt; do you understand this?

10:00AM 8 DEFENDANT FRUIT: Yes.

10:00AM 9 THE COURT: If you went to trial and you were found
10:00AM 10 guilty, you would have no right to appeal your conviction at
10:00AM 11 sentence; do you understand this?

10:00AM 12 DEFENDANT FRUIT: Yes.

00AM 13 THE COURT: If you plead guilty, you waive, that is
10:00AM 14 you give up every single one of these trial rights I just
10:01AM 15 mentioned; do you understand this?

10:01AM 16 DEFENDANT FRUIT: Yes.

10:01AM 17 THE COURT: If you plead guilty and I accept your
10:01AM 18 plea, there'll be no trial, I will enter a finding of guilty
10:01AM 19 on the basis of your plea, and then sentence you after a
10:01AM 20 sentence hearing; do you understand this?

10:01AM 21 DEFENDANT FRUIT: Yes.

10:01AM 22 THE COURT: I have in front of me a written plea
10:01AM 23 agreement, I'm holding this up. Have you seen this agreement?

10:01AM 24 DEFENDANT FRUIT: Yes.

01AM 25 THE COURT: Have you read it?

10:01AM 1 DEFENDANT FRUIT: Yes.

10:01AM 2 THE COURT: And did you discuss it with your lawyer?

10:01AM 3 DEFENDANT FRUIT: Yes.

10:01AM 4 THE COURT: Have any agreements or promises been made
10:01AM 5 to you that are not contained in this writing?

10:01AM 6 DEFENDANT FRUIT: No.

10:01AM 7 THE COURT: After you read it and signed it and
10:01AM 8 discussed it with your attorney, did you sign it where I'm
10:01AM 9 pointing my finger?

10:01AM 10 DEFENDANT FRUIT: Yes.

10:01AM 11 THE COURT: I'm going to go over a couple of terms of
10:02AM 12 the agreement with you, but I do want to tell you, first of
10:02AM 13 all, that, under the law, the maximum sentence for this
10:02AM 14 offense is 20 years in prison, a maximum fine of \$250,000, all
10:02AM 15 to be followed by a period of supervised release which must
10:02AM 16 last two years and could last as many as 3; do you understand
10:02AM 17 that's the maximum?

10:02AM 18 THE WITNESS: Yes.

10:02AM 19 THE COURT: In addition to that, I'm going to have to
10:02AM 20 order restitution in the amount that was taken; do you
10:02AM 21 understand?

10:02AM 22 DEFENDANT FRUIT: Yes.

10:02AM 23 THE COURT: In this case, the agreed amount of
10:02AM 24 restitution is \$5,308; do you understand that?

10:02AM 25 DEFENDANT FRUIT: Yes.

10:02AM 1 THE COURT: In addition to any sentence I impose upon
10:02AM 2 you, I'm going to have to assess you \$100; do you understand
10:02AM 3 that?

10:03AM 4 DEFENDANT FRUIT: Yes.

10:03AM 5 THE COURT: Now, most sentences are not imposed at
10:03AM 6 the maximum level, they're imposed with certain guidelines.
10:03AM 7 You and your lawyer and the government have looked at the
10:03AM 8 guidelines in this case and they believe the guideline to be
10:03AM 9 77 months at minimum and up to 96 months at the maximum. Do
10:03AM 10 you understand that's the probable guideline which will apply
10:03AM 11 to your case?

10:03AM 12 DEFENDANT FRUIT: Yes.

10:03AM 13 THE COURT: It is possible that a mistake was made
10:03AM 14 and the guideline might be a little higher or a little lower;
10:03AM 15 do you understand that?

10:03AM 16 DEFENDANT FRUIT: Yes.

10:03AM 17 THE COURT: And, also, no matter what the guideline
10:03AM 18 is, I am free, I can impose any sentence I choose. That is to
10:03AM 19 say, I could sentence you to 20 years in prison, 240 months,
10:03AM 20 and I could sentence you to zero months; do you understand
10:03AM 21 that that's entirely up to me?

10:03AM 22 DEFENDANT FRUIT: Yes.

10:03AM 23 THE COURT: Now, the government agrees that they are
10:04AM 24 going to recommend a sentence within the applicable guideline
04AM 25 range. Do you understand that means that the government is

10:04AM 1 not going to ask me to go above the guideline range?

10:04AM 2 DEFENDANT FRUIT: Yes.

10:04AM 3 THE COURT: But do you also understand that I don't
10:04AM 4 have to follow the government's recommendation?

10:04AM 5 DEFENDANT FRUIT: Yes.

10:04AM 6 THE COURT: It also says here that whatever sentence
10:04AM 7 I impose, you're going to be giving up any right you have to
10:04AM 8 appeal that sentence or to challenge it in any way later on;
10:04AM 9 do you understand that?

10:04AM 10 DEFENDANT FRUIT: Yes.

10:04AM 11 THE COURT: Now, your lawyer has probably explained
10:04AM 12 to you, and it's in the agreement, that there are a couple of
10:04AM 13 exceptions to that rule which would allow you to challenge a
10:04AM 14 sentence. I will tell you now that those exceptions are very
10:05AM 15 rare, so for all practical purposes, you are giving up any
10:05AM 16 right you have to appeal a challenge at sentence; do you
10:05AM 17 understand this?

10:05AM 18 DEFENDANT FRUIT: Yes.

10:05AM 19 THE COURT: Has anyone forced you in any way to plead
10:05AM 20 guilty?

10:05AM 21 DEFENDANT FRUIT: No.

10:05AM 22 THE COURT: Has anyone threatened you in way to cause
10:05AM 23 you to plead guilty?

10:05AM 24 DEFENDANT FRUIT: No.

10:05AM 25 THE COURT: Apart from the plea agreement, have any

10:05AM 1 promises been made to cause you to plead guilty?

10:05AM 2 DEFENDANT FRUIT: No.

10:05AM 3 THE COURT: Is your decision to plead guilty entirely
10:05AM 4 voluntary?

10:05AM 5 DEFENDANT FRUIT: Yes.

10:05AM 6 THE COURT: Again, do you understand that the final
10:05AM 7 decision as to what your sentence will be rests with me?

10:05AM 8 DEFENDANT FRUIT: Yes.

10:05AM 9 THE COURT: Would the government please summarize
10:05AM 10 what its evidence would be with respect to this charge if the
10:05AM 11 case were tried.

10:05AM 12 MR. VERSEMAN: Yes, your Honor. If this case were to
10:05AM 13 go to trial, the government would prove the following facts
10:05AM 14 beyond a reasonable doubt:

10:05AM 15 That on January 5, 2007, the defendant aided and
10:05AM 16 abetted codefendant Wright in taking by intimidation from the
10:05AM 17 person and presence of a bank employee \$5,308 belonging to and
10:05AM 18 in the care, custody, control, management and possession of
10:05AM 19 State Bank of Paw Paw, 235 Chicago Road, Paw Paw, Illinois,
10:06AM 20 the deposits of which were then insured by the Federal Deposit
10:06AM 21 Insurance Corporation.

10:06AM 22 That prior to January 5, 2007, the defendant and
10:06AM 23 Wright had discussed the fact that they both needed money.
10:06AM 24 During the morning of January 5, 2007, defendant met with
10:06AM 25 Wright at a house in Rockford, Illinois, where the defendant

10:06AM 1 had been staying.

10:06AM 2 Defendant and Wight then discussed committing a bank
10:06AM 3 robbery. They agreed to rob the State Bank of Paw Paw in Paw
10:06AM 4 Paw, Illinois. Defendant told Wright that he knew the area
10:06AM 5 around Paw Paw and that there would be no police officers in
10:06AM 6 that area.

10:06AM 7 Defendant and Wright argued about which of them would
10:06AM 8 be the one to enter the bank to commit the robbery, but they
10:06AM 9 ultimately agreed Wright would go inside the bank.

10:06AM 10 Defendant also gave Wright instructions about how to
11 commit the robbery. Defendant then gathered certain items to
12 be used in the robbery and placed them in a bag. Defendant
13 and Wright then got into Wright's red, 1992 Jeep Cherokee.

14 Wright drove his jeep, with the defendant as a
15 passenger, from Rockford to Paw Paw, Illinois. Prior to the
16 robbery, defendant and Wright stopped the vehicle and placed
10:06AM 17 stolen license plate on the rear of the jeep. The defendant
10:06AM 18 as passenger from Rockford to Paw Paw, Illinois prior to the
10:07AM 19 vehicle stopped the vehicle and placed a stolen license plate
10:07AM 20 on the rear of the Jeep.

05:20PM 21 When they arrived at State Bank of Paw Paw, Wright
05:20PM 22 parked the Jeep in the parking lot to the side of the bank.
05:20PM 23 Both defendant and Wright got out of the Jeep and walked
05:21PM 24 toward the front door of the bank. Wright entered the bank,
21PM 25 while defendant remained outside the front door as a lookout.

05:21PM 1 After wright entered the bank, he walked toward a
05:21PM 2 teller who was at her teller station. The teller asked if she
05:21PM 3 could help wright. wright then demanded that the teller take
05:21PM 4 all of the money out of her drawer and place it on the
05:21PM 5 counter. The teller reached into her drawer, grabbed \$5,308
05:21PM 6 that belonged to the bank, and provided it to wright. wright
05:21PM 7 placed the money into a plastic bag. wright then asked if
05:21PM 8 there was any more money. The teller responded "no." She
05:22PM 9 then showed wright her coin tray and asked him if he wanted
05:22PM 10 that. wright responded that he did not want change. wright
05:22PM 11 walked away and left the bank.

05:22PM 12 After wright left the bank, he and defendant then
22PM 13 walked back to the Jeep and got inside. Then with wright
05:22PM 14 driving, they drove away from the bank.

05:22PM 15 A short distance from the bank, a Lee County
05:22PM 16 Sheriff's deputy, driving a marked squad car, signaled for
05:22PM 17 wright to stop. wright initially stopped the Jeep. After
05:22PM 18 briefly discussing with defendant what they should do,
05:22PM 19 however, wright sped off.

05:22PM 20 wright and defendant subsequently led Lee County and
05:22PM 21 DeKalb County Sheriff's deputies on a high speed chase.
05:23PM 22 During the course of this chase, defendant threw several items
05:23PM 23 out of the window of the Jeep. Eventually, wright pulled into
05:23PM 24 a farm on the outskirts of Sycamore, Illinois. Defendant and
23PM 25 wright both jumped out of the Jeep and began to run towards

05:23PM 1 the woods. After a short foot chase, defendant turned and
05:23PM 2 pointed a BB gun at a Lee County deputy. The deputy fired his
05:23PM 3 service weapon at defendant, striking him in the ear.
05:23PM 4 Defendant was then taken into custody.

10:08AM 5 THE COURT: Mr. Fruit, did you hear what the
10:08AM 6 prosecutor just said?

10:08AM 7 THE WITNESS: Yes.

10:08AM 8 THE COURT: Is what he said the truth?

10:08AM 9 DEFENDANT FRUIT: Yes.

10:08AM 10 THE COURT: Jacob fruit, what is your plea to this
10:08AM 11 charge?

10:08AM 12 DEFENDANT FRUIT: Guilty.

10:08AM 13 THE COURT: Since you acknowledge that you are in
11:01AM 14 fact guilty as charged, you've had the assistance of a lawyer,
11:01AM 15 you know what your trial rights are, you know what the maximum
11:01AM 16 possible punishment is and you are voluntarily pleading
11:01AM 17 guilty, I accept your plea of guilty and enter a judgment of
11:01AM 18 guilt on your plea.

11:01AM 19 I'm going to order a presentence investigation.
11:01AM 20 Your lawyer will explain the process to you.

11:01AM 21 There will be a report prepared about you. You'll
11:01AM 22 have a chance to see that report before I do. And if you
11:01AM 23 think there are mistakes in the report, you can bring them to
11:01AM 24 the attention of the probation officer or to my attention if
01AM 25 you think it's necessary.

11:01AM 1 At the sentencing hearing your lawyer will make
11:01AM 2 arguments on your behalf, the prosecutor will have her say as
11:01AM 3 well. The last thing I usually hear before I sentence is
11:02AM 4 anything you want to say to me yourself. I tell you this now
11:02AM 5 so you can think about whatever it is you wish to say to me on
11:02AM 6 that day. If you choose not to speak on your own behalf, I
11:02AM 7 will not hold it against you.

10:09AM 8 The matter is continued for disposition at 2:00 p.m.
10:09AM 9 on?

10:10AM 10 MR. VERSEMAN: Judge, I would relate to the Court,
10:10AM 11 the probation officer in this case contacted me and requested
10:10AM 12 a date sometime late November or early December based on her
10:10AM 13 schedule.

10:10AM 14 THE COURT: And the sentencing will be in Rockford?

10:10AM 15 MR. VERSEMAN: Rockford, your Honor.

10:10AM 16 THE COURT: Yes.

10:10AM 17 So, Mr. Walker?

10:10AM 18 THE CLERK: Wednesday, December 5th.

10:10AM 19 MR. FLYNN: That's fine.

10:10AM 20 MR. VERSEMAN: That's fine with me, your Honor.

10:10AM 21 THE CLERK: 2:00 p.m.

22 THE COURT: Thanks, counsel.


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I, BLANCA I. LARA, DO CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



Blanca I. Lara



Date

10:10AM
10:10AM

EXHIBIT B

09:53AM

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	No. 07 CR 50001
Government,)	
)	
Vs.)	Chicago, Illinois
)	
JACOB A. FRUIT,)	December 5, 2007
)	
Defendant.)	1:53 o'clock p.m.

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BEFORE THE HONORABLE JAMES B. ZAGEL
SENTENCING

For the Government:

THE HONORABLE PATRICK J. FITZGERALD,
UNITED STATES ATTORNEY
BY: Scott A. Verseman
308 West State Street
Suite 300
Rockford, Illinois 61101

For the Defendant:

FEDERAL DEFENDER PROGRAM
BY: Haneef Omar
55 East Monroe Street, Suite 2800
Chicago, Illinois 60603

Court Reporter:

Blanca I. Lara, CSR, RPR
219 South Dearborn Street
Room 2504
Chicago, Illinois 60604
(312) 435-5895

56PM

THE CLERK: 2007 CR 50001, United States versus Jacob

01:56PM 1 THE CLERK: 2007 CR 50001, United States versus Jacob
01:56PM 2 Fruit.
01:56PM 3 MR. VERSEMAN: Good afternoon, your Honor.
01:56PM 4 Scott Verseman for the United States.
01:56PM 5 MR. OMAR: Good morning, your Honor.
09:53AM 6 Haneef Omar on behalf of Jacob Fruit who also appears
01:56PM 7 before your Honor.
01:56PM 8 THE PROBATION OFFICER: Tori Powell from U.S.
01:56PM 9 Probation.
01:56PM 10 THE COURT: I have in front of me a presentence
01:56PM 11 investigation report. Counsel, for the defense, I take it
01:56PM 12 you've read this report?
01:56PM 13 MR. OMAR: Yes, your Honor.
01:56PM 14 THE COURT: And you have discussed it with your
01:56PM 15 client, as well?
01:56PM 16 MR. OMAR: I have.
01:56PM 17 THE COURT: Corrections, changes, objections?
01:56PM 18 MR. OMAR: I do have an objection to the presentence
01:56PM 19 investigation, your Honor.
01:56PM 20 THE COURT: Beyond the written one?
01:56PM 21 MR. OMAR: No, your Honor.
01:56PM 22 THE COURT: Go ahead.
01:57PM 23 Have you read it, as well.
01:57PM 24 MR. VERSEMAN: Yes, I have.
01:57PM 25 THE COURT: Corrections, changes?

01:57PM 1 MR. VERSEMAN: No corrections or changes.

01:57PM 2 THE COURT: Proceed, counsel.

01:57PM 3 MR. OMAR: Yes, your Honor. We would object to the
01:57PM 4 two-point enhancement for vulnerable victim under 3A1.1(b)(1).
01:57PM 5 I believe the two points were added because the bank was in a
01:57PM 6 rural location. As I pointed out in our written response, the
01:57PM 7 bank is not the victim, but the people, the tellers there. As
01:57PM 8 the case law that I looked over also pointed out, it's the
01:57PM 9 bank tellers that have to have some unique characteristic
01:57PM 10 about them, separate and apart from all bank tellers that
01:57PM 11 would allow for the enhancement.

01:57PM 12 The two points are not appropriate in this case, your
01:57PM 13 Honor, because we don't have enough information that shows
01:57PM 14 that the two victims were vulnerable, one; and two, that
01:57PM 15 Mr. Fruit knew they were vulnerable. I believe an additional
01:57PM 16 case that's out there from, I believe, the Eleventh Circuit
01:58PM 17 cites to what the defendant thought or believed, and I believe
01:58PM 18 the statute, the sentencing guidelines calls for what the
01:58PM 19 defendant knew.

01:58PM 20 And we have a statement, that is not what the
01:58PM 21 defendant knew. He doesn't have substantial knowledge of the
01:58PM 22 area, or the police patrol schedule, or the location of the
01:58PM 23 police at that instance. And, in fact, he was wrong about the
01:58PM 24 presence of the police in the area at that time. The police
58PM 25 responded very quickly and apprehended Mr. Fruit after a short

01:58PM 1 chase. So Mr. Fruit did not have the knowledge that the bank
01:58PM 2 was, in fact, vulnerable because of the location of the bank
01:58PM 3 in a rural area.

01:58PM 4 So with that, your Honor, we would request that two
01:58PM 5 points not be added for as a vulnerable victim enhancement,
01:58PM 6 and Mr. Fruit's offense level be a 24 and his category 3 with
01:59PM 7 the guideline range of 63 to 78 months.

01:59PM 8 I would also point out that I believe, if my review
01:59PM 9 of the record is correct, Mr. Fruit's codefendant, Mr. Wright,
01:59PM 10 if I'm not incorrect, I don't believe the enhancement applied
01:59PM 11 in that case.

01:59PM 12 THE COURT: I did decide the enhancement did not
01:59PM 13 apply in that case.

01:59PM 14 MR. VERSEMAN: That is correct, your Honor. As far
01:59PM 15 as the government's position, as we did in the codefendant's
01:59PM 16 case, the government takes no position with this issue. While
01:59PM 17 we do note that the probation officer has support for her
01:59PM 18 decision in the Eleventh Circuit decision in Phillips, we're
01:59PM 19 not sure that the Eleventh Circuit's position is consistent
01:59PM 20 with the commentary in the application notes as MR. OMAR has
01:59PM 21 noted in his submission. Note 2 of this particular 3A1.1
01:59PM 22 defines a vulnerable victim to be a person, and goes on to say
01:59PM 23 who is unusually vulnerable due to age, physical or mental
02:00PM 24 condition, due to age physical condition, et cetera. Because
00PM 25 the definition uses the word "person," it mentions human

02:00PM 1 characteristics. I think it's difficult for me to argue an
02:00PM 2 institution such as a bank could be a vulnerable victim;
02:00PM 3 therefore, we take no position.

02:00PM 4 THE COURT: I previously ruled that the bank was not
02:00PM 5 a vulnerable victim, and I did so on a variety of grounds, one
02:00PM 6 having to do with the fact that they had private security in
02:00PM 7 addition to whatever local officials they had. Also, it's an
02:00PM 8 area that is policed not merely by whatever police there are
02:00PM 9 in Paw Paw, but also by the sheriff and the State Police.
02:01PM 10 But, more importantly, as I thought with respect to the
02:01PM 11 defendant's case, the difficulty with applying any kind of
02:01PM 12 vulnerable victim in this situation is that the vast majority
02:01PM 13 of robberies of this sort, and in fact the vast majority of
02:01PM 14 robberies in general, are always conducted because the people
02:01PM 15 that are doing it think that there is something that weighs in
02:01PM 16 their favor when they do it: an easy escape path, no police
02:01PM 17 officer in sight. It's a characteristic of most rational
02:01PM 18 attempts to rob banks and to rob stores. I just assume that
02:02PM 19 there is some circumstances here which make this victim or
02:02PM 20 this target a suitable target; particularly, you can always
02:02PM 21 say that it's a vulnerable victim because they wouldn't have
02:02PM 22 done it if they didn't think that the victim was vulnerable.

02:02PM 23 So even if it applied to institutions as well as
02:02PM 24 persons, I don't think vulnerable victim enhancement is
02PM 25 appropriate in this case. It may very well be that Congress

02:02PM 1 might take a different view, which they are entitled to do,
02:02PM 2 but I don't think that they have done it, and I think the
02:02PM 3 Eleventh Circuit and the courts of appeals that have talked
02:02PM 4 about this and been inclined to treat it as vulnerable are
02:03PM 5 just not within the ambit of the guidelines, leaving apart the
02:03PM 6 occasional bank robber, that I see at least, and I think
02:03PM 7 others have, who just want to be caught, but they're not too
02:03PM 8 many of them. So the appropriate guideline in this case would
02:03PM 9 be 24/3.

02:04PM 10 That's 63 to --

02:04PM 11 MR. VERSEMAN: 78.

02:04PM 12 MR. OMAR: 78.

02:04PM 13 THE COURT: 63 to 78.

02:04PM 14 Now you can speak to the question of whether the
02:04PM 15 guidelines are appropriate and where within the guideline
02:04PM 16 range we should sentence. We'll begin with the defense.

02:04PM 17 MR. OMAR: Yes, your Honor. We feel that the
02:04PM 18 guideline range is appropriate; however, the low end sentence
02:04PM 19 of that guideline range is sufficient but not greater than
02:04PM 20 necessary under the premise 3553A.

02:04PM 21 If I may point out a little bit about Mr. Fruit's
02:04PM 22 history and background. Mr. Fruit has a criminal history
02:04PM 23 category 3, he has a previous robbery of this same bank, as
02:04PM 24 well.

04PM 25 Mr. Fruit was 18 at the time, and a lot of his

02:04PM 1 criminal history stems from going through a difficult period
02:04PM 2 of his life while he was a youth. Just prior to that first
02:04PM 3 instance, he was informed that the father he had known his
02:05PM 4 whole life was not actually his biological father and his
02:05PM 5 mother would not have contact with him. So for a young man
02:05PM 6 16, 17, 18 years old, he did not know how to cope with that,
02:05PM 7 so he found himself spending time with individuals that were
02:05PM 8 not healthy for him and he made a poor decision.

02:05PM 9 The first robbery was a spur of the moment kind of
02:05PM 10 thing where he found himself in a depressed state and hopeful
02:05PM 11 for money and he robbed the bank with a simple note he slid
02:05PM 12 across the desk, and he was given the money for that first
02:05PM 13 robbery. And he served his time and he served his supervised
02:05PM 14 release after that.

02:05PM 15 This robbery came shortly after he was discharged
02:05PM 16 from his supervised release. With this robbery, again
02:05PM 17 Mr. Fruit had trouble dealing with the difficult events in his
02:05PM 18 life, and this one he had joined a family. He had taken care
02:06PM 19 of a woman and her two children and had treated them like his
02:06PM 20 own and she had left him for a very good friend of his.
02:06PM 21 Again, Mr. Fruit, a young man, he didn't deal with that in an
02:06PM 22 appropriate way and he stated, I believe, in the PSI, that he
02:06PM 23 didn't care about the consequence of his actions, and he found
02:06PM 24 himself again involved with the wrong crowd.

06PM 25 Mr. Wright and Mr. Fruit were traveling to Earlville

02:06PM 1 where Mr. Fruit is from, and having discussed Mr. Fruit's past
02:06PM 2 and robbing the bank. Again, Mr. Fruit's spur of the moment
02:06PM 3 decision. Mr. Fruit made the decision to stay outside and not
02:06PM 4 participate robbing the bank from inside. He was a passenger
02:06PM 5 in the vehicle, he acted as a look-out, and when Mr. Wright
02:06PM 6 emerged from the building, again they fled.

02:07PM 7 And so Mr. Fruit is aware of the problems that lead
02:07PM 8 him into criminal activity. And he's notified the probation
02:07PM 9 officer with respect to that he's aware now that he has
02:07PM 10 difficulty dealing with his depression and the difficulties
02:07PM 11 that come along with his life. Now that he knows that and
02:07PM 12 identifies when he's most vulnerable making a decision, he can
02:07PM 13 address that ahead of time.

02:07PM 14 His time in the Bureau of Prisons would be conducive
02:07PM 15 in answering those problems, he can get treatment, drug
02:07PM 16 counseling, a number of things that allow him to mature and
02:07PM 17 deal with a number of issues that caused him to find himself
02:07PM 18 in a situation where he is today. Mr. Fruit would be close to
02:07PM 19 30 when he is out and will have matured in a way the Court
02:07PM 20 will be assured he won't turn to criminal activity.

02:08PM 21 With that, your Honor, there's a number of different
02:08PM 22 factors regarding Mr. Fruit's life. I know I skipped around a
02:08PM 23 little bit regarding the 3553 factors regarding the nature and
02:08PM 24 the offense, but considering Mr. Fruit's background and the
02:08PM 25 events that occurred today, we feel the guideline range is

02:08PM 1 appropriate. The Sentencing Commission has thought about and
02:08PM 2 discussed the aggravating factors that apply today, the
02:08PM 3 obstruction of justice that occurred here. Mr. Fruit actually
02:08PM 4 lost partial hearing in his ear, applying the obstruction of
02:08PM 5 justice, we think, taking it out of the guideline range is not
02:08PM 6 appropriate, seeing he has already received two points for his
02:09PM 7 fleeing. We feel that within the guideline range sentence is
02:09PM 8 an appropriate sentence and ask that Mr. Fruit be sentenced to
02:09PM 9 the low end of that guideline range.

02:09PM 10 THE COURT: Mr. Verseman.

02:09PM 11 MR. VERSEMAN: Yes, your Honor. It's the
02:09PM 12 recommendation of the government that the Court sentence
09PM 13 Mr. Fruit at the upper end of the range, 63 to 78 month range.
02:09PM 14 We base our recommendation sentencing factors 18 U.S.C.
02:09PM 15 Section 3553, specifically the history and characteristics of
02:09PM 16 the defendant, the need for the sentence to reflect the
02:09PM 17 seriousness of the offense, and provide just punishment and
02:09PM 18 afford adequate deterrence and protect the public from further
02:09PM 19 crimes of this defendant.

02:09PM 20 The need for just punishment and need to protect the
02:09PM 21 public, I would point out that a bank robbery is a serious
02:09PM 22 offense, a violent crime, has the potential for someone to be
02:09PM 23 seriously hurt, if not killed. And, in addition, this is a
02:09PM 24 crime that has a psychological effect on the victims, the bank
10PM 25 employees. This is something that can have a lasting effect

02:10PM 1 on these people.

02:10PM 2 As far as the need for just punishment and the need
02:10PM 3 to protect the public, Mr. Omar has already mentioned it, but
02:10PM 4 this is a defendant who robbed the very same bank in December
02:10PM 5 of 2000 and then he turns around and robs again in January of
02:10PM 6 '07. I've been a prosecutor for 17 years and I like to think
02:10PM 7 I know a little bit about motivation for particular crimes;
02:10PM 8 however, I'm simply at a loss to explain what the defendant's
02:10PM 9 motivation for robbing the same bank. I would hope not some
02:10PM 10 sort of vindictiveness for this bank for cooperating in the
02:10PM 11 prosecution for the first time, but we just don't know.

02:10PM 12 Regardless of what the defendant's motivation is, I
02:10PM 13 think the employees of the State Bank of Paw Paw have a right
02:10PM 14 to expect that the gentleman who committed a violent crime
02:11PM 15 against them and their bank, twice in a span of 6 years, would
02:11PM 16 expect to receive a lengthy sentence. I think that is needed
02:11PM 17 to protect the public from this individual, to protect these
02:11PM 18 bank employees from this individual, and to provide just
02:11PM 19 punishment for this man who has victimized these people twice
02:11PM 20 within a period of 6 years.

02:11PM 21 As far as the history and characteristics of the
02:11PM 22 defendant are concerns, it's our position that these also
02:11PM 23 warrant a sentence in the upper end of the range. As I've
02:11PM 24 already mentioned, this is a second federal bank robbery
11PM 25 conviction. This is a defendant who has previously been

02:11PM 1 before the same court, U.S. District Court for the Northern
02:11PM 2 District of Illinois, for the exact same offense. Obviously,
02:11PM 3 he did not learn his lesson. Obviously, he has not been
02:11PM 4 reformed and he is back in front of the same court for the
02:11PM 5 same offense.

02:11PM 6 Now, although the Court correctly found the criminal
02:11PM 7 history is 3, and as noted by Mr. Omar, the defendant did get
02:11PM 8 a benefit on the recent change in the guideline range;
02:12PM 9 otherwise, he would have been in criminal history 4, and that
02:12PM 10 range would have been increased 77 to 96 months.

02:12PM 11 I'd also like to point out to the Court the other
02:12PM 12 serious criminal conduct of this defendant. Although no
02:12PM 13 convictions, he has been charged with other offenses and just
02:12PM 14 in a very short time span preceding the bank robbery he was
02:12PM 15 charged with here, and those charges are outlined in the
02:12PM 16 presentence report. And particularly the ones that are
02:12PM 17 serious, in my view, are the October 30th, 2006, Ogle County
02:12PM 18 charge where criminal information was filed charging the
02:12PM 19 defendant with three counts of theft of postal money orders
02:12PM 20 that occurring August 24, 2006. In addition, on October 31st
02:12PM 21 of '06, the very next day, in Winnebago County, the defendant
02:12PM 22 was charged with theft of computer and computer disk from a
02:12PM 23 business where he was doing janitorial work. This defendant's
02:13PM 24 history is spiraling more and more toward criminal conduct.

13PM 25 Under the guidelines, the government could have filed

02:13PM 1 a motion upward for criminal history category which
02:13PM 2 under-represents the defendant's conduct and the likelihood of
02:13PM 3 additional offenses. We're not making that motion here, but
02:13PM 4 my point is that I think this serious criminal conduct, and
02:13PM 5 the other criminal conduct that's out there, justifies a
02:13PM 6 sentence at the upper end of the range.

02:13PM 7 In addition, I would like to point to the nature and
02:13PM 8 circumstances of the offense. The circumstances of this
02:13PM 9 offense when compared with the prior bank robbery, show a
02:13PM 10 defendant who is becoming more sophisticated and whose
02:13PM 11 criminal history conduct is becoming more dangerous. I would
02:13PM 12 like to point out a couple of factors.

02:13PM 13 The first robbery, the defendant conducted himself
02:13PM 14 and was passing a note; in the second, the defendant gets an
02:13PM 15 accomplice to work with him and serve as a lookout. The first
02:13PM 16 robbery, the defendant was easily caught because he took off
02:14PM 17 from the scene in a car that had a personalized license plate
02:14PM 18 of Fruit 34. Well, when we get to the second offense here,
02:14PM 19 the defendant brings with him another license plate and
02:14PM 20 changes the license plate of the vehicle he is riding in with
02:14PM 21 Mr. Wright prior to the bank.

02:14PM 22 This is a defendant showing more planning and taking
02:14PM 23 more steps to avoid detection. We disagree with Mr. Omar when
02:14PM 24 he says it was a spur-of-the-moment offense as indicated by
14PM 25 Mr. Wright in his plea agreement. This is something they

02:14PM 1 planned out at least in the morning of the robbery and took
02:14PM 2 with them the materials they would need when they got into the
02:14PM 3 vehicle to leave for Paw Paw.

02:14PM 4 In addition, one particular circumstance of the
02:14PM 5 offense warrants a sentence at the higher end of the range,
02:14PM 6 and that is that when the sheriff's deputies were in the
02:14PM 7 course of apprehended the defendant, the defendant pointed a
02:14PM 8 weapon at one of the police officers. Thankfully, that was
02:14PM 9 just a BB gun, but what if instead of getting a BB gun that
02:15PM 10 day, the defendant had had access to a 9 millimeter or some
02:15PM 11 other type of pistol?

02:15PM 12 Now, I realize that the Court has already included an
02:15PM 13 enhancement for brandishing a firearm, but I think the Court
02:15PM 14 should still take that into account in evaluating the
02:15PM 15 defendant's dangerousness and the need to protect the public
02:15PM 16 from further criminal conduct of this defendant.

02:15PM 17 In addition, the defendant's pointing of a weapon at
02:15PM 18 a police officer shows a willingness and propensity to engage
02:15PM 19 in violent criminal conduct beyond just the run-of-the-mill
02:15PM 20 bank robber who simply passes on a note.

02:15PM 21 For these reasons, your Honor, the government
02:15PM 22 requests and recommends the Court sentence this defendant at
02:15PM 23 the upper end of the guideline range.

02:16PM 24 THE COURT: Do you have any brief response to that?

02:16PM 25 MR. OMAR: I would only highlight, your Honor, the

02:16PM 1 guidelines do take into consideration much of the prosecutor's
02:16PM 2 arguments. Mr. Fruit is already subject to enhancement for
02:16PM 3 obstruction of justice and for brandishing a firearm, as well.
02:16PM 4 His criminal history is reflected in the category 3. Yes, it
02:16PM 5 did occur, but the Court should not consider that to
02:16PM 6 Mr. Fruit's detriment. The law is what it is as of November
02:16PM 7 1, 2007. Had the law changed for the worse, for more
02:16PM 8 punishment, Mr. Fruit would be subject to that punishment, as
02:16PM 9 well. We just ask the Court to consider the low end of the
02:16PM 10 guideline range. He has learned from his mistakes, he is
02:16PM 11 apologetic.

02:16PM 12 THE COURT: Is there anything you would like to say
02:16PM 13 to me before I sentence you?

02:17PM 14 THE DEFENDANT: No, your Honor.

02:17PM 15 THE COURT: Can I ask you a question?

02:17PM 16 THE DEFENDANT: Sure.

02:17PM 17 THE COURT: Why did you send Wright into the bank?

02:17PM 18 THE DEFENDANT: There is -- I really don't know.

02:17PM 19 THE COURT: The guideline is appropriate for this.
02:17PM 20 I'm not going to go above or below the guideline in this case.
02:17PM 21 There are two things that bother me about this. One of them
02:17PM 22 is not any particular fear of this particular defendant
02:17PM 23 deliberately perpetrating horrible crimes; he is not.

02:18PM 24 I don't like to use these two words together, but I
18PM 25 can't help it, he is not a skilled criminal. But he presents

02:18PM 1 a danger that I saw in this case that may not be obvious to
02:18PM 2 anybody, because in some significant respects, the bank isn't
02:18PM 3 the only victim here. His codefendant is the other victim.
02:18PM 4 He sent Wright into the bank, which is ordinarily the more
02:18PM 5 dangerous thing to do. And while I don't give great weight to
02:18PM 6 -- particularly great weight to what Mr. Verseman says about
02:19PM 7 pointing the BB gun, my concern is, I think, at the time that
02:19PM 8 BB gun was pointed, Wright was already on the ground and in
02:19PM 9 custody.

02:19PM 10 MR. VERSEMAN: Yes, your Honor.

02:19PM 11 THE COURT: But the fact of the matter is, I'm quite
02:19PM 12 sure that if Wright and he were running together, he would
19PM 13 still have pointed the BB gun and not only have gotten himself
02:19PM 14 shot, he might have gotten Wright shot. So he endangered
02:19PM 15 Wright.

02:19PM 16 And so while the sentencing guidelines don't talk a
02:19PM 17 great deal to this and don't attach points to this, the fact
02:19PM 18 is is that your client was the leader of this small little
02:19PM 19 criminal enterprises, and he led it in such a way to endanger
02:20PM 20 his follower, and that counts against him, too. And for that
02:20PM 21 reason, I'm giving him the 78 months in the custody of the
02:20PM 22 Bureau of Prisons, to be followed by a period of 3 years of
02:20PM 23 supervised release. I'm imposing \$400 fine to be paid to the
02:20PM 24 Inmate Financial Responsibility Program; \$100 special
20PM 25 assessment. There is no restitution in this particular case.

02:20PM 1 The conditions of supervised release are that he participate
02:20PM 2 in a drug-after care at the direction of the Probation Office,
02:20PM 3 that he participate in mental health evaluation and
02:21PM 4 recommended treatment. That he abide by all of the standard
02:21PM 5 conditions of supervised release by order of court. That he
02:21PM 6 may not commit another criminal act under the law of any
02:21PM 7 jurisdiction, municipal, state or federal. He may not, of
02:21PM 8 course, possess a firearm or explosive device. If there is
02:21PM 9 any part of the fine that's not paid during the custodial
02:21PM 10 period, repayment becomes a condition of the supervised
02:21PM 11 release, and he must contribute 10 percent of his monthly
02:21PM 12 earnings as a minimum toward payment of the fine.

02:22PM 13 I designate the defendant to a comprehensive drug
02:22PM 14 treatment program. Is that something which you concur?

02:22PM 15 MR. OMAR: Yes.

02:22PM 16 THE DEFENDANT: (Nodding.)

02:22PM 17 THE COURT: I will make that recommendation. Was
02:22PM 18 there a waiver of appeal?

02:22PM 19 MR. VERSEMAN: Yes, your Honor.

02:22PM 20 THE COURT: Anything further?

02:22PM 21 MR. OMAR: Your Honor, we would request that the
02:22PM 22 Court make a recommendation for Lexington, Kentucky.

02:22PM 23 THE COURT: Why Lexington?

02:22PM 24 MR. OMAR: It's where Mr. Fruit was housed after his
22PM 25 previous robbery. He is familiar with it.

02:22PM

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THE COURT: So it's not because it's near anybody,

02:22PM

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right?

02:22PM

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MR. OMAR: No, your Honor.

02:22PM

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THE COURT: I'll recommend Lexington.

02:22PM

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MR. OMAR: Thank you.

02:22PM

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THE COURT: Anything further?

02:22PM

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MR. VERSEMAN: No, your Honor.

02:22PM

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MR. OMAR: No, your Honor.

02:22PM

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THE COURT: Thank you.

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I, BLANCA I. LARA, DO CERTIFY THAT THE FOREGOING IS A CORRECT

14

TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

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ABOVE-ENTITLED MATTER.

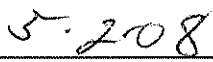
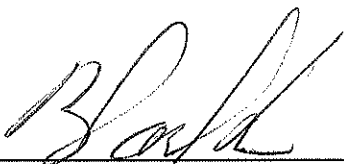
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Blanca I. Lara

Date

02:24PM

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EXHIBIT C

1707-000019

ADVICE OF RIGHTS

Place Dixon, IL
Date 1-5-2007
Time 9:35 P

YOUR RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions.

You have the right to have a lawyer with you during questioning.

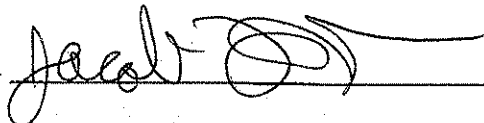
If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you have the right to stop answering at any time.

WAIVER OF RIGHTS


I have read this statement of my rights and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present.

Signed



Witness: Casimer J. Solana

Witness:

Witness: 

Time: 9:37 P

EXHIBIT D

AFFIDAVIT

1. I, HANEEF OMAR, am an attorney with the Federal Defender Program in the Northern District of Illinois, Western Division.

2. Attorney Paul Flynn, formerly of the Federal Defender Program in the Northern District of Illinois, Western Division, was initially assigned to represent Jacob A. Fruit in the case of United States v. Jacob A. Fruit & Phillip G. Wright, 07 CR 50001.

3. In April and May of 2007, I stood in for Mr. Flynn on behalf of Mr. Fruit at two status hearings before Magistrate Judge Mahoney. At both of these status hearings, at the direction of Mr. Flynn, I requested additional time for the filing of pre-trial motions on behalf of Mr. Fruit.

4. In August and early September of 2007, Mr. Flynn negotiated a plea agreement with the United States on behalf of Mr. Fruit.

5. In early September of 2007, I delivered a copy of the plea agreement to Mr. Fruit. I reviewed the contents of the plea agreement with Mr. Fruit. I also explained the change of plea process to Mr. Fruit and advised him of his rights. I further told Mr. Fruit that the ultimate decision regarding his sentence would be determined by the district judge. I did not tell Mr. Fruit that I was unaware of the facts of his case or that I could not assist him. I do recall discussing the facts of this case with Mr. Fruit. Prior to this meeting, I had become familiar with the facts of the case through conversations with Mr. Flynn and my own personal review of the file. I did inform Mr. Fruit that I could not comment on any advice he may have received from Mr. Flynn. I also informed Mr. Fruit that it was my opinion that

the plea agreement was an appropriate resolution, since the United States had agreed not to pursue certain aggravating factors. For example, the United States had agreed not to argue that Fruit should receive a leadership enhancement, pursuant to Guideline 3B1.1.

6. Mr. Flynn represented Mr. Fruit at his plea hearing on September 5, 2007.

7. I was present when the Probation Officer interviewed Mr. Fruit for purposes of preparing the Pre-Sentence Investigation Report ("PSR"). I did not inform Mr. Fruit that I could not assist him because of lack of knowledge about his case. I did inform Mr. Fruit that he should direct any questions he had regarding the case to Mr. Flynn, since Mr. Flynn was still the attorney assigned to represent him.

8. I was informed that Mr. Fruit subsequently attempted to contact the Probation Officer. I was also informed that the Investigator for the Federal Defender Program in the Northern District of Illinois, Western Division, Brad Stallings, advised Mr. Fruit that any contact with the Probation Officer in the absence of counsel would be ill-advised.

9. In November of 2007, Mr. Flynn transferred from the Rockford office to the Chicago office of the Federal Defender Program. After Mr. Flynn transferred, I was assigned to represent Mr. Fruit.


10. I reviewed the Pre-Sentence Investigation Report prepared for Mr. Fruit's case. On November 28, 2007, I filed an objection to the PSR's proposed "vulnerable victim" enhancement. On November 29, 2007, I sent Mr. Fruit a copy of the objection I filed on his behalf. A copy of my cover letter to Mr. Fruit, dated November 29, 2007, is attached to this affidavit. In my letter, I invited Mr. Fruit to call me if he had any questions. Despite my

invitation, Mr. Fruit did not contact me prior to his sentencing hearing.

11. I represented Mr. Fruit at his sentencing hearing on December 5, 2007. Prior to this hearing, I did not apologize to Mr. Fruit for being unable to help him. In addition, I did not promise Mr. Fruit that he would receive a sentence at the low end of the Guidelines range: I have never made such a promise to any of my clients. I may have informed Mr. Fruit that, based upon information received from my colleagues in Chicago, Judge Zagel had a reputation for fairness. Mr. Fruit never asked me to move that the sentencing hearing be continued.

12. At the sentencing hearing, I represented Mr. Fruit to the best of my ability. The court granted my objection to the PSR and refused to apply the "vulnerable victim" enhancement.

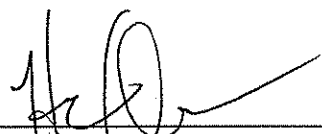
FURTHER AFFIANT SAYETH NAUGHT.



HANEEF OMAR

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON: 5/16/08



HANEEF OMAR

Jacob Fruit
Inmate
Ogle County Jail
PO Box 217
Oregon, IL 61061

November 29, 2007
Via hand delivery

Mr. Fruit;

Attached please find a copy of the Presentence Investigation Report objections filed on your behalf in this case. I understand you spoke with Paul Flynn regarding a separate issue that is not to be including in the objections. As you may know, Paul Flynn is now in the Chicago office and I will be handling your sentencing. I will speak with you in much more detail before our sentencing hearing. If you have any questions at all please feel free to contact me at the above address and phone number.

Sincerely;

Haneef

EXHIBIT E



*United States Attorney
Northern District of Illinois
Western Division*

*Scott A. Verseman
Assistant U.S. Attorney*

*308 West State Street - Room 300
Rockford, Illinois 61101*

*PH: (815) 987-4444
FAX: (815) 987-4236*

March 15, 2007

HAND DELIVERY

Paul Flynn, Esq.
Federal Defender's Office
202 West State Street -- Suite 600
Rockford, Illinois 61101

Re: United States v. Jacob A. Fruit,
07 CR 50001-01 (USDC ND IL WD)

Dear Mr. Flynn:

Enclosed is a CD containing additional discovery materials. These materials are stamped 000144 - 223.

As I discussed with Haneef Omar on March 13, 2007, the next status hearing for your client has been moved, from 11:00 a.m. on March 19th, to 9:00 a.m. on March 19th. If you have not already done so, please make a note of the new time for this status.

If you have not already done so, I ask that you to examine the possibility of a plea agreement with your client. As you know, any plea agreement must be reached sufficiently in advance of trial in order to permit review by the United States Attorney. We anticipate that we will begin our trial preparation in this case at least 3 weeks prior to trial. Therefore, I request that your client give the United States a firm commitment to plead guilty at least 3 weeks prior to trial and that any guilty plea be entered at least 2 weeks prior to trial. If you fail to comply with these deadlines, the United States will argue that your client is ineligible to receive an additional third level of reduction for acceptance of responsibility, pursuant to Guideline 3E1.1(b).

I will look forward to seeing you on Monday, March 19th, at 9:00 a.m.


Very truly yours,

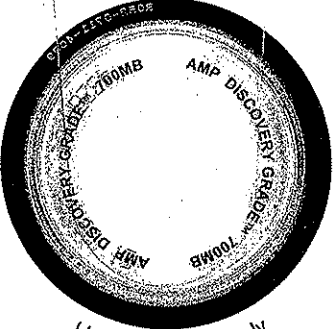
PATRICK J. FITZGERALD
United States Attorney

By:


SCOTT A. VERSEMAN
Assistant United States Attorney

Enclosure


United States Attorney's Office
Northern District of Illinois
219 S. Dearborn St., 5th Floor
Chicago, IL 60604
(312) 353-5300




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Case Name/Number: Fruit

Contents: 000144-000223

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1907-000217

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/12/2007

PHILLIP G. WRIGHT, date of birth, July 1, 1986, was interviewed, while in custody, at the Federal Courthouse Building, Rockford, Illinois (IL). WRIGHT, accompanied by his attorney, JOHN NELSON, agreed to provide information to the Interviewing Agent and Assistant United States Attorney (AUSA) SCOTT VERSEMAN, in the form of a Proffer Interview. At 10:20 a.m., the Interviewing Agent and AUSA VERSEMAN joined WRIGHT and Attorney NELSON in the interview room. At that time, WRIGHT signed a Proffer Agreement Letter; the original letter was retained by AUSA VERSEMAN. WRIGHT provided the following information:

WRIGHT is from Rockford; he is twenty years old. He was educated at Ombudsman Educational Services. WRIGHT received his G.E.D. two years ago. In regards to his most recent employment, WRIGHT worked at a machine shop in Rockton, IL. Prior to his arrest, WRIGHT was living with his mother, DEBORAH OTTO.

WRIGHT met JACOB FRUIT through a friend's girlfriend; this was about two and a half months ago. WRIGHT and FRUIT were friends, not drug buddies.

WRIGHT would often drive around in his Jeep. FRUIT was living with BRIAN RUGINSON (phonetic). RUGINSON and FRUIT both lived at RUGINSON's girlfriend's place in Rockford. WRIGHT has known RUGINSON for eleven years.

WRIGHT and FRUIT did not have discussions about committing a bank robbery prior to that day, January 5, 2007. On that day, WRIGHT woke up and took care of his heroin problem. FRUIT told WRIGHT that he needed a ride to Earlville, IL in order to help out his cousin with a car. WRIGHT does not know if FRUIT used drugs that day.

For this ride, FRUIT gave WRIGHT ten to twenty dollars for gasoline money. They both got in WRIGHT's Jeep. WRIGHT drove to Route 20 and then turned onto Interstate 39, heading south. He did not drive to Earlville. During the ride, WRIGHT and FRUIT talked about their money problems. FRUIT said that he had a kid on the way and had to pay his rent. WRIGHT told FRUIT that he owed his mother some money. FRUIT said that committing a bank robbery

Investigation on 01/24/2007 at Rockford, ILFile # 91A-CG-126753Date dictated N/Aby SA CASIMER J. SOLANA/cjs

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Continuation of FD-302 of PHILLIP G. WRIGHT, On 01/24/2007, Page 2

would be an easy way to get money. FRUIT explained that a bank has to give you the money because it is their policy.

WRIGHT was pretty high on drugs during this conversation with FRUIT. WRIGHT owed money to his parents and his grandparents at the time of the bank robbery. Additionally, WRIGHT was on the waiting list for admission into the Gateway Center for drug rehabilitation; he needed money for that.

On the day of the bank robbery, WRIGHT and FRUIT were in the Jeep, near Paw Paw, IL, when they started talking about the bank robbery. They talked about who would go inside the bank and do the robbery. WRIGHT did not know that FRUIT had robbed that same bank years ago. He should have realized that FRUIT had done this before.

FRUIT instructed WRIGHT on how to rob the bank. FRUIT said that WRIGHT should tell the bank employee nicely to give him the money, without any force. FRUIT said that the bank will give WRIGHT the money. FRUIT instructed WRIGHT to tell the bank teller not to hit any alarms.

FRUIT also explained to WRIGHT why he (FRUIT) should not go inside the bank. FRUIT said that he used to live in the area of the bank. He did not want to go inside because he would have been recognized. At some point, WRIGHT told FRUIT, "Screw it, I'll be the one that goes in."

In regards to the b.b. gun that FRUIT had in his possession during the bank robbery, WRIGHT did not know anything about it. During the foot pursuit by the police, WRIGHT was wondering why there were shots being fired.

Prior to committing the bank robbery, FRUIT and WRIGHT pulled over the Jeep in order to switch the license plates. FRUIT supplied the license plate. Earlier that morning, when FRUIT entered the Jeep, he had a plastic grocery bag with him. There were several items inside the bag: hats, gloves, and the extra license plate. WRIGHT asked FRUIT for a hat. FRUIT gave him a stocking cap.

WRIGHT stopped the Jeep outside of Paw Paw, just off of Country Road. FRUIT said to WRIGHT, "We gotta change the plates so they don't trace us." FRUIT changed out the back license plate.

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Continuation of FD-302 of PHILLIP G. WRIGHT, On 01/24/2007, Page 3

1907-000219

When WRIGHT and FRUIT talked about the bank robbery plan, they were near Paw Paw. FRUIT said, "I know there's a bank in Paw Paw." The gloves that WRIGHT had on came from the bag that FRUIT had with him. WRIGHT and FRUIT had no discussions about their getaway. Prior to entering the bank, WRIGHT told FRUIT, "If I go inside the bank, you need to stand by the front door."

Before the bank robbery, WRIGHT and FRUIT drove through Paw Paw once. FRUIT then changed the license plate outside of town, on a country road. Following that, they drove back into town and then parked in the bank parking lot. WRIGHT left the engine running. WRIGHT put on the gloves while sitting in the Jeep, in the parking lot. WRIGHT had his hat on. FRUIT had his hat on and put on his gloves. They both got out of the Jeep and walked towards the bank. FRUIT was a couple of feet behind WRIGHT. FRUIT stopped at the entrance to the bank; WRIGHT went inside.

WRIGHT walked up to a bank teller. He told her, "I need you to please empty your drawers. Don't press any alarms." The female bank teller offered him some change; he did not want it. WRIGHT removed a plastic bag from his hoodie pocket. He received the bag from FRUIT. The teller placed the money on the counter. She offered WRIGHT some change. He walked away from her and exited the bank.

While inside the bank, WRIGHT observed some other people. During the robbery, FRUIT was at the front door, possibly on his cellular telephone. When WRIGHT walked out of the bank, he told FRUIT, "Let's go." They then both went to the Jeep. WRIGHT and FRUIT planned on going back to Rockford following the bank robbery.

WRIGHT made a left turn out of the bank parking lot. He then made another left turn and eventually traveled on the road that the bank was on. WRIGHT handed the bag of money to FRUIT so that he could drive better. WRIGHT and FRUIT did not say anything to each other. FRUIT set the bag of money on the floorboard.

WRIGHT saw the police car when he made a left turn at the stop sign, near the bank. WRIGHT turned left at the nearest road; he stopped the Jeep. FRUIT told WRIGHT, "You might as well go, we're already in trouble." At this point, the police officer was out of his car, standing by it. WRIGHT asked FRUIT what to do. WRIGHT started driving away. The police car was following them.

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Continuation of FD-302 of PHILLIP G. WRIGHT, On 01/24/2007, Page 4

FRUIT started to throw things out of the window. The objects included WRIGHT's tools and boots. WRIGHT believes that FRUIT did this in order to get the police to stop chasing them.

WRIGHT did not see FRUIT do anything with the bank robbery money. FRUIT handed him some and took the rest of it. During the vehicle pursuit, FRUIT told WRIGHT, "Find a wooded area so we could run into it." FRUIT was telling WRIGHT which turns to make, "Turn here...turn there."

WRIGHT ran over a spike strip; he saw it at the last second. FRUIT knew that they had a flat tire. FRUIT told WRIGHT to find a wooded area. FRUIT was directing him. FRUIT did not tell WRIGHT what to do after the Jeep was stopped. Once near the farm, FRUIT said, "Pull in here." WRIGHT and FRUIT jumped out of the Jeep and started running away. WRIGHT jumped out of the Jeep while it was still moving. He heard the Jeep crash into a tree while he was running.

WRIGHT placed his bank robbery money in the pocket of his hoodie. WRIGHT was tackled by a police officer. WRIGHT had tripped over a vine. He did not see where FRUIT went. WRIGHT heard the gun shots that were fired; he did not observe them. WRIGHT was on the ground at the time of the gun shots.

WRIGHT has had no contact with FRUIT since the last court date.

The interview of WRIGHT ended. He was remanded to the custody of the United States Marshals.

1907-000220

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/13/2007

1907-000221

PHILLIP G. WRIGHT, date of birth, July 1, 1986, was interviewed, while in custody, at the Federal Courthouse Building, Rockford, Illinois (IL). WRIGHT, accompanied by his attorney, JOHN NELSON, agreed to provide information to the Interviewing Agent and Assistant United States Attorney (AUSA) SCOTT VERSEMAN, in the form of a Proffer Interview. WRIGHT provided the following information:

WRIGHT advised that he had not been truthful in his prior statements to the Interviewing Agent and AUSA VERSEMAN. WRIGHT apologized to the interviewers for this. He withheld information about the planning of the bank robbery with JACOB FRUIT. WRIGHT believed that his prison sentence would have been harsher if his actions on the day of the bank robbery were considered to be premeditated.

WRIGHT and FRUIT first started talking about committing a bank robbery on the morning of January 5, 2007. At 7:00 or 8:00 a.m., that morning, they were both at FRUIT's place, talking about it. FRUIT lived with his friends, BRIAN and PAM. WRIGHT had been kicked out his mother's house.

FRUIT was already there when WRIGHT arrived. WRIGHT went over there to hang out and talk with FRUIT. On the day before, WRIGHT and FRUIT had a conversation about how broke they were. FRUIT said that he would think about how to get some money. He said that he had some ways that he could get some. FRUIT did not want to discuss it further over the telephone. WRIGHT provided his cellular telephone number as, 988-5107. WRIGHT believes that FRUIT's cellular telephone number is, 319-0838.

On the day of the bank robbery, WRIGHT had used some heroin at the house, but not with FRUIT. After WRIGHT shot up with some heroin, FRUIT came over and talked to him. FRUIT said that a bank robbery would be a good way to get some money. FRUIT talked about a bank in Paw Paw, IL. He explained that the town and the bank were out of the way; there were no cops around. FRUIT did not tell WRIGHT that he had robbed this same bank before.

FRUIT brought the bank robbery clothes with him. While WRIGHT sat on the couch, FRUIT went to his room and gathered gloves, hats, and everything else. FRUIT placed all of the items

Investigation on 01/31/2007 at Rockford, ILFile # 91A-CG-126753Date dictated N/Aby SA CASIMER J. SOLANA/cjs

1907-000222

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Continuation of FD-302 of PHILLIP G. WRIGHT, On 01/31/2007, Page 2

into a bag. WRIGHT observed all of this from the living room. WRIGHT did not observe FRUIT placing a gun into the bag. No one else was in the house with WRIGHT and FRUIT at this time. WRIGHT believes that FRUIT may have used BRIAN's b.b. gun for the bank robbery.

WRIGHT is pretty sure that FRUIT got the license plate out of his car. WRIGHT kept the old license plates for his Jeep inside of it. The Jeep used to belong to WRIGHT's immediate family. The license plates were sitting inside of a bag in the car.

FRUIT told WRIGHT that he did not need a gun for the bank robbery. He also told WRIGHT that he did not need to scream at people during the robbery. FRUIT told him that the bank tellers are trained to give up the money; the bank is insured.

WRIGHT did not know that FRUIT had served time in prison for committing a bank robbery. WRIGHT knew that FRUIT had been to prison, but he thought it was for drugs.

On the morning of the bank robbery, FRUIT and WRIGHT discussed the plan for about one and a half hours. No one else was at the house. They went over everything so that it would be clear. They did not decide on who would go inside the bank. WRIGHT thought that both of them would go inside. They also talked about changing the license plate on the Jeep. They decided that it should be a different license plate when driving away from the bank.

Following this, WRIGHT and FRUIT drove to Paw Paw. WRIGHT drove through the town once or twice. They then went out of town and changed the license plate on the Jeep. FRUIT changed the license plate. WRIGHT is not sure if FRUIT wore gloves when he did this. FRUIT probably did not need a screwdriver to change the license plate. The screws that hold on the plate are pretty loose.

The other license plate that was recovered inside of WRIGHT's Jeep, belongs to his brother, NICK. If not, it belongs to his father, GREG. WRIGHT got the Jeep in the summer. He got a temporary plate and this plate. WRIGHT threw the old license plate in his Jeep. WRIGHT purchased the Jeep from his father legally.

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Continuation of FD-302 of PHILLIP G. WRIGHT, On 01/31/2007, Page 3

WRIGHT had not provided some of this information in earlier interviews, because he thought that his actions on the day of the bank robbery would be considered premeditated.

The interview of WRIGHT concluded. He was remanded to the custody of the United States Marshals.

EXHIBIT F

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 01/31/2007

JACOB ALLEN FRUIT, date of birth, January 6, 1982, Social Security Account Number, 357-70-2554, was interviewed, while in custody, at the Lee County Jail, Dixon, Illinois (IL). FRUIT was interviewed by Special Agent (SA) CASIMER J. SOLANA, SA GRAIG A. PETERSON, and Detective DAVID M. GLESSNER, Lee County Sheriff's Department. At approximately 9:30 p.m., FRUIT was brought into an interview room, joining the aforementioned interviewers. FRUIT was provided with the identities of each of the interviewers. SA SOLANA, observing that FRUIT had an apparent injury to his ear, asked him if he could hear. FRUIT advised that he could hear, and that he was willing to provide a statement to the interviewers regarding his arrest earlier in the day. FRUIT advised that he was administered some morphine at the hospital earlier today. At 9:35 p.m., SA SOLANA provided FRUIT with an FD-395, Advice of Rights Form. SA SOLANA read aloud, to FRUIT, each of the rights contained on the form. Upon being read his rights, FRUIT acknowledged that he understood each of them. At 9:37 p.m., FRUIT signed the FD-395 form; SA SOLANA and SA PETERSON signed the form as witnesses. The original FD-395 form will be maintained in a 1-A envelope in the file. FRUIT provided the following information:

The name of the person that FRUIT was with earlier today, when they were both arrested, is PHIL (WRIGHT). This morning, PHIL came by and picked up FRUIT. FRUIT wanted a ride to Earlville, IL. PHIL agreed to give FRUIT a ride to Earlville. With PHIL driving, FRUIT fell asleep during the ride. FRUIT's girlfriend is SARAH BROWN, age 20. They are expecting a child.

FRUIT has known PHIL for a couple of months. FRUIT asked PHIL for a ride today. He offered PHIL some money for gasoline. PHIL gave FRUIT some pills for his migraine headache.

Regarding today's incident at the STATE BANK OF PAW PAW, FRUIT provided the following information:

PHIL stopped at the bank; he went inside. A short time later, PHIL came out of the bank, carrying a bag of money and a gun. PHIL knows that FRUIT had been convicted of robbing a bank years ago.

Investigation on 01/05/2007 at Dixon, ILFile # 91A-CG-126753Date dictated N/Aby SA CASIMER J. SOLANA/cjs
SA GRAIG A. PETERSON

1907-000113

91A-CG-126753

Continuation of FD-302 of JACOB A. FRUIT, On 01/05/2007, Page 2

After exiting the bank, PHIL proceeded to the bank parking lot and entered his Jeep; FRUIT got in also. PHIL started screaming. He drove his Jeep onto a gravel road and then in a big circle. FRUIT saw a police car on the side of the road. The police officer started to chase PHIL and FRUIT. Eventually, the police tried to stop PHIL's Jeep by placing a spike-strip on the road. During the police chase, PHIL told FRUIT to put on a ski-mask. FRUIT felt threatened by PHIL because PHIL was holding a gun when he ordered him to do this. Additionally, PHIL told FRUIT to place the money from the bank robbery into his (FRUIT's) pockets. PHIL also told FRUIT to start throwing objects out of the window.

Once the Jeep came to a stop, PHIL told FRUIT to start running away from the cops. PHIL still had the gun in his hand when they both got out of the Jeep. PHIL was behind FRUIT when the two of them were running away from the police. FRUIT ran into some vines. PHIL fell down to the ground. FRUIT thought that this would be a good opportunity to get the gun away from PHIL. FRUIT believed that it would be better if he had control of the gun as opposed to PHIL having control of it. FRUIT picked up the gun and started running again. The police officer was right there. PHIL was knocked to the ground by the police officer. FRUIT only remembers bits and pieces of the incident.

FRUIT continued running away from the police officer. As he was doing this, he wanted to let the police officer know that he had PHIL's gun. At this point in the interview, FRUIT demonstrated with his hand how he waved the gun above his head so that the chasing police officer could see it. FRUIT yelled out to the police officer, "I have his gun! I have his gun!" FRUIT did not know where the police officer was. In order to locate the officer, FRUIT turned his body towards the area behind him. FRUIT demonstrated this maneuver to the interviewers. The hand in which FRUIT was holding the gun, swung around his body. FRUIT heard some gunshots; something hit his head. FRUIT was taken into custody by the police officer.

FRUIT was asked to provide additional details about the information he had provided during the interview; he provided the following information:

FRUIT needed a ride to Earlville in order to fix his girlfriend's car. The car is a Dodge Stratus, possibly a 1998 model. FRUIT believes that there was a problem with the starter.

1907-000114

91A-CG-126753

Continuation of FD-302 of JACOB A. FRUIT, On 01/05/2007, Page 3

His girlfriend lives in Cherry Valley, IL; her telephone number begins with 815-519 or 815-517.

During the trip to Earlville, FRUIT woke up and realized that he and PHIL were on the wrong side of Paw Paw. PHIL told FRUIT that he needed to stop at the bank and cash his check. PHIL parked his Jeep in the bank parking lot and got out of the vehicle. He messed with his papers. FRUIT, tired from the trip, got out of the vehicle so that he could smoke a cigarette. He also wanted to stretch his legs. FRUIT and PHIL did not walk together towards the bank. PHIL entered the bank. FRUIT sat down on a brick wall that was near the bank entrance. He sat there and smoked one half of a cigarette. Additionally, FRUIT used his cellular telephone to try to contact his girlfriend. He made a couple of telephone calls but did not get through to his girlfriend. FRUIT did not leave a message for her.

After PHIL exited the bank, he entered his Jeep. PHIL threw the bag of money on the floorboard directly in front of FRUIT. FRUIT looked down and could see that there was a lot of money inside of the bag. FRUIT asked PHIL if he could get out of the Jeep. PHIL told FRUIT, "You've done it before. Just stay in the car." PHIL offered FRUIT some money if he would just stick with him.

This morning, FRUIT was suffering from a migraine headache. PHIL gave him a few pills to make him feel better. FRUIT took four different pills; one was red and white. FRUIT did not know what the pills were; they could have been muscle relaxers. Once in a while, FRUIT takes a Vicodin pill; his discs in his neck are messed up.

During today's police pursuit, FRUIT grabbed the steering wheel from PHIL a couple of times. He did this because he wanted to help stop the vehicle for the police. FRUIT saw the spike-strip ahead on the road; he tried to swerve the car into the spike-strip.

FRUIT believes that PHIL robbed the bank because he needed money for drugs. FRUIT knows BRIAN, PAM's boyfriend.

Regarding the gun that PHIL had today, FRUIT has never seen it before. BRIAN does not have any real guns. The gun that PHIL had today was real; it was heavy. FRUIT reiterated that PHIL told him to stuff the bank robbery money into his pockets. He did this because PHIL was holding a gun at the time.

1907-000115

91A-CG-126753

Continuation of FD-302 of JACOB A. FRUIT, On 01/05/2007, Page 4

When the police officer came up behind them, PHIL told FRUIT that he was going to lose them. During the foot pursuit, PHIL told FRUIT to run in front of him. It is possible that FRUIT got out of the Jeep before PHIL did. While they were running, PHIL and FRUIT bumped into each other; they both fell down. At that point, FRUIT picked up PHIL's gun.

In the past, FRUIT has told PHIL about his history with that bank branch. They have driven past it; FRUIT pointed it out to PHIL. FRUIT is trying to start a family; he has too much going on. In terms of employment, FRUIT is not working much right now.

FRUIT denies that he pointed the gun at the police officer today. He was waving the gun over his head, yelling, "I have his gun. I have his gun." FRUIT has no idea what kind of gun it was. He does not know how many bullets were inside of it. FRUIT does not know what caliber the gun was.

The police were behind FRUIT when he was running from the Jeep. He cannot explain why he kept running when the cops were chasing him.

During his transport to this jail tonight, FRUIT asked the deputy, "They did catch old boy (PHIL), didn't they?" The police officer replied to FRUIT that he could not talk about it. After arriving at this jail, FRUIT told the jail guards two or three times, "Hey, it wasn't me."

FRUIT's girlfriend knows that he was going to fix her car the following day. FRUIT acknowledged that he robbed the same bank in December 2000. He got out of prison about 3 ½ years ago. FRUIT got off federal probation in August 2006; his probation agent was ERIC SEAGREN.

At this point in the interview, SA SOLANA stated to FRUIT that his statement regarding today's events was unbelievable and untruthful. FRUIT was provided with another opportunity to describe the events that occurred today. He advised that the entire statement he provided to the interviewers consisted of the truth.

FRUIT added that PHIL looked startled when he exited the bank and saw him standing there. He believes that PHIL did not know that FRUIT would be standing outside the bank. FRUIT

1907-000116

91A-CG-126753

Continuation of FD-302 of JACOB A. FRUIT, On 01/05/2007, Page 5

reiterated that PHIL pointed the gun at him during the police chase.

The interview of FRUIT ended.

At 11:40 p.m., SA SOLANA and Detective GLESSNER exited the interview room; SA PETERSON remained with FRUIT. At 11:55 p.m., SA SOLANA entered the interview room with Detective WILLIAM KRONKE, Illinois State Police (ISP). Detective KRONKE was accompanied by another ISP detective. SA PETERSON exited the room. Detective KRONKE provided FRUIT with his identity. FRUIT agreed to be interviewed by Detective KRONKE regarding his arrest and the injuries he sustained as a result of the arrest. SA SOLANA observed as Detective KRONKE provided FRUIT with his Constitutional Rights. FRUIT agreed to proceed with the interview.

At 12:05 a.m., SA SOLANA exited the interview room.

1907-000117